PUEBLO OF POJOAQUE

LAW AND ORDER CODE

2026

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Introduction

The will of the Pueblo of Pojoaque is expressed only through its Tribal Council (collectively comprised of a General Council and a Regular Council). The General Council is the highest authority within the Pueblo. The General Council meets once every two years or at the call of the Governor and is composed of all enrolled members over the age of 18. All General Council members may vote on issues before the General Council. Every two years, on even-numbered years, the General Council elects the Tribal Officials. The Tribal Officials are the Governor, Lieutenant Governor, Secretary, and Treasurer. The Tribal Officials are responsible for the day-to-day operations and are the external representatives of the Pueblo. The General Council has given the Regular Council the authority to make decisions on its behalf; however, these decisions can be reconsidered by the General Council.

The Regular Council is responsible for passing resolutions, setting policy and making decisions between meetings of the General Council. The Regular Council currently meets every first and third Thursday of each month and any enrolled member over the age of 18 may attend. The Governor presides over all Tribal Council meetings.

The Pueblo of Pojoaque Law and Order Code is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Regular Council, which is authorized to promulgate and enforce law and ordinances providing for the maintenance of law and order and the administration of justice within the Pueblo's jurisdiction and on Pueblo lands; to administer and protect Pueblo lands and property; to exclude individuals not legally entitled to remain thereon; to regulate the conduct of trade and the use and disposition of property; to engage in economic activities that will promote the health, peace, morals, education, and welfare of the Pueblo and its Members and their families; and to perform other routine governmental functions.

The Pueblo of Pojoaque Law and Order Code in its entirety was originally approved by the Tribal Council on or around March 1, 1983 and re-codified on December 19, 2013. The Code is a systematic collection of the Pueblo's laws arranged by subject matter. Subsequent to its original enactment, the Tribal Council has amended or changed various sections of the Code through the passage of Resolutions.

An updated version of the 2013 Law and Order Code is released each year. **This 2023 version of the Pueblo of Pojoaque Law and Order Code incorporates additions, amendments, and revisions of the Pueblo's laws as of September 30, 2022.** Individuals should consult the Law and Order Code Supplement concerning ordinances and Resolutions passed subsequent to that date.

Subpart A Title, Purpose and Definitions

A-1 Title & Citation

(a) Title. These various Subparts and Sections contained herein are organized into a comprehensive set of laws and shall be known as the "Pueblo of Pojoaque Law and Order Code."

(b) Organization. The Pueblo of Pojoaque Law and Order Code shall be organized in groups of resolutions, codes, acts or ordinances and/or governing documents with similar subject matter. Each subject matter grouping shall be designated as a Subpart and identified by an alphanumeric designation and caption (e.g., Subpart A Title, Purpose and Definitions). Each resolution, code, act or ordinance shall be given a Section number (e.g., "A-1 Title & Citation").

(c) Citation. Citation to this Code shall be by letters "PPLOC" followed by the appropriate Subpart, Section and Subsection in parenthesis (e.g., "PPLOC Subpart A" or "PPLOC A-1(c)"). Whenever a reference is made to the Pueblo of Pojoaque Law and Order Code, or to any governing document of the Pueblo codified herein, the reference shall apply to all amendments now and hereinafter made.

A-2 Purpose

(a) It is the purpose of this Law and Order Code to strengthen Tribal self-government, provide for the judicial needs of the Pueblo, and ensure maintenance of the law and order within the exterior boundaries of the Pueblo of Pojoaque.

(b) This Law and Order Code shall supersede all governing documents inconsistent herewith and applicable prior to the approval of this Code.

(c) All Law and Order Code revisions or amendments made since 1983 require or have required Tribal Council approval. After such approval, these revisions or amendments shall become part of the Law and Order Code. No revisions or amendments shall require further approvals.

(d) The laws in the Code shall be enforced by the Pueblo of Pojoaque.

A-3 Definitions

In this Code, unless the context otherwise requires:

(a) "Adult" shall mean a person who is eighteen (18) years of age or older.

(b) "Code" and "Law and Order Code" shall mean the Pueblo of Pojoaque Law and Order Code.

(c) “Governor” shall mean the Governor of the Pueblo of Pojoaque.

(d) “Indian” shall mean any person who is a member of any Indian tribe recognized by Federal or state jurisdiction, or who is an Alaska Native and member of a Regional Corporation as defined in 1606 of title 43, United States Code.

(e) “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(f) “Juvenile Court” shall mean the judge(s) of the Tribal Court specifically convened to preside over proceedings involving a juvenile person.

(g) “Non-Indian” shall mean a person who is not an Indian.

(h) “Person” shall mean a natural person, a corporation or unincorporated Indian association, except as defined under Subpart M.

(i) “Property” shall mean both real and personal property.

(j) “Pueblo” shall mean the Pueblo of Pojoaque.

(k) “Pueblo Courts” shall mean the Tribal Court and Court of Appeals for the Pueblo of Pojoaque.

(l) “Tribal Council” or “Council” shall mean the regular Tribal Council of the Pueblo of Pojoaque which is responsible for passing resolutions, setting policy and making decisions between meetings of the General Council, unless otherwise specifically stated otherwise.

(m)“Tribal Court” shall mean the trial court for the Pueblo of Pojoaque, composed according to Subpart D.

(n) “Tribal Member” “Enrolled Member” or “Member” shall mean an enrolled member of the Pueblo of Pojoaque, unless otherwise specifically indicated.

(o) “Tribal Official” shall mean a duly elected leader of the Pueblo holding office at the time of the occurrence.

(p) “Tribal Police” shall mean the Pueblo of Pojoaque Tribal Police Department.

(q) “Tribal Ranger” shall mean a tribal officer responsible for protecting tribal lands, cultural sites and trust lands be enforcing tribal laws and ordinances.

A-4 Pueblo of Pojoaque Legal Name

(a) The legal name of the Pueblo is “Pueblo of Pojoaque” not “Pojoaque Pueblo.”

(b) All Pueblo of Pojoaque entities and enterprises shall use only the legal name of the Pueblo in all circumstances and the name Pojoaque Pueblo shall be changed to Pueblo of Pojoaque on all signs and stationery as soon as possible.

Subpart B Judicial Power and the Courts

B-1 Jurisdiction

The Pueblo of Pojoaque has jurisdiction over its Members and within the exterior boundaries of the Pueblo, subject to some exceptions. Jurisdictional rules are set forth in greater detail in Subpart C.

B-2 Judicial Power

(a) The judicial powers of the Pueblo of Pojoaque shall be vested in an Appeals Court and a Tribal Court and shall extend to all cases and controversies in law and equity arising under and authorized by the duly enacted laws of the Pueblo of Pojoaque Tribal Council.

(b) The Court of Appeals and the Tribal Court shall have, but are not limited to the following powers:

1. To punish for contempt any of its officers or other persons present at judicial proceedings.

2. To compel witnesses to attend and testify and produce documents or other tangible objects to be used as evidence, provided that a defendant in a criminal trial may not be compelled to be a witness against himself.

B-3 The Tribal Court

(a) Composition. The Tribal Court shall be referred to as the Tribal Court, and shall consist of a Chief Judge appointed by the Tribal Council, whose duties shall be full time and one or more Associate Judges may be called to serve when the occasion arises. The Associate Judges may be hired on contract and compensated on a per diem basis.

(b) Court Sessions. Regular sessions of the Tribal Court shall be held on work days at times and places designated by the Chief Judge.

(c) Qualification of Judges. Any person over the age of twenty-one (21) years old shall be eligible to serve as Judge of the Pueblo of Pojoaque Tribal Court. The prospective Judge shall appear before the Tribal Council and submit to a background interview and present their qualifications. If the prospective Judge does not have a law degree, they shall complete a course of training in judicial proceedings within six (6) months after being appointed to the position.

(d) Disqualification of Presiding Judge. No Judge shall hear or determine any case wherein he has an interest or wherein any relative, by marriage or blood in the first or second degree is a party. Any party to a proceeding may raise the issue of the qualification of the Judge to hear the case.

(e) Removal. Any Judge of the Tribal Court may be suspended, dismissed or removed by the Tribal Council for any of the following reasons:

1. Conviction of a felony in any court.

2. Conviction of any offense involving moral turpitude in any court.

3. Conviction of the offense of disorderly conduct.

4. Being under the influence of alcoholic beverages while presiding over Court.

5. Any other conduct unbecoming to a Judge of the Pueblo of Pojoaque Tribal Court.

(A Judge shall be given full and fair opportunity to reply to any and all charges for which he or she may be removed from his judicial office.

B-4 The Court of Appeals

(a) Jurisdiction. The Court of Appeals shall have jurisdiction to hear appeals from final orders and final judgments of the Tribal Court.

(b) Composition. The Court of Appeals shall consist of either the Pueblo of Pojoaque Tribal Council with the Governor presiding as Judge or a special appellate court as appointed by the Governor.

(c) Sessions. The Court of Appeals may consider the appeal during a regularly scheduled Tribal Council meeting or at a special appellate court meeting.

(d) Only the Tribal Court Judge may stay a sentence or decision pending the appeal process.

(e) Criminal Appeals. A person convicted of a violation of the Pueblo of Pojoaque Law and Order Code may appeal the conviction to the Court of Appeals by filing a written notice with the Tribal Council Secretary. The written notice must be filed within ten (10) calendar days after the finding of guilt by the Tribal Court.

(f) Civil Appeals. The decision of the Tribal Court or jury may be appealed to the Court of Appeals by filing a written notice with the Tribal Council Secretary. The written notice must be filed within ten (10) calendar days after the final decision.

(g) All written notices of appeal shall include the specific order of the Tribal Court or jury that is appealed. The written notice shall also include the remedy requested.

B-5 Right of Appeal

(a) Any party to a case, other than the prosecution in a criminal case, who is aggrieved by a final order or final judgment of the Tribal Court, shall have the right to appeal to the Court of Appeals.

(b) The appealing party shall file with the Governor of the Pueblo of Pojoaque a notice of appeal, along with a filing fee of one hundred dollars ($100.00) within ten (10) days after the entry of the final order or final judgment from which appeal is taken. The filing fee may be waived in the appeal of a criminal conviction if the defendant files an affidavit swearing that he is without funds to pay the filing fee. If the Pueblo of Pojoaque Court of Appeals finds that the defendant is without funds to pay the filing fee, it shall order that the fee be permanently waived.

(c) If the Court of Appeals finds that any or a combination of the following has occurred, it shall order the judgment or order reversed or may remand the case for retrial:

1. Irregularities in the proceedings or conduct by the jury, adverse party, or his counsel prejudicial to the appellant;

2. Any ruling, order, or abuse of discretion which may have prevented a fair trial;

3. Newly discovered evidence which could not, with reasonable diligence, have been produced at trial;

4. Insufficient evidence to support the verdict;

5. Any error of law occurring at the trial prejudicial to the appellant; or

6. Any other reason which would warrant reversal by a court when reviewing a similar appeal.

(d) If the Court of Appeals finds that reversal under Paragraph (c) of this section is unwarranted, it shall affirm the judgment or order appealed from; no further appeal shall thereafter be permitted.

B-6 *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court

(a) The *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court is established as a trial court of special jurisdiction with authority to hear all cases referred to it pursuant to the laws of the Pueblo of Pojoaque.

(b) Composition. The Chief Judge of the Tribal Court or an Associate Judge appointed by Tribal Council will preside over the Path to Wellness Court. The Path to Wellness Team, composed according to the Path to Wellness Policies and Procedures Manual, will assist in day-to-day operations and development of the Path to Wellness Court.

(c) Court Sessions. Participants in the Path to Wellness Court will appear regularly before the Judge throughout the duration of their participation.

(d) Policies and Procedures. The Path to Wellness Team shall promulgate policies and procedures to address the issues of confidentiality, treatment, sanctions, community involvement, and all other necessary components of Healing to Wellness Courts. The Path to Wellness Court will adhere to all rules and guidelines of the Path to Wellness Policies and Procedures Manual.

B-7 (***) *Wen Hey Kha Wosatsi Khuu* (Youth Path to Wellness) Court

(a) The (***) *Wen Hey Kha Wosatsi Khuu* (Youth Path to Wellness) Court is established as a trial court of special jurisdiction with authority to hear all cases referred to it pursuant to the laws of the Pueblo of Pojoaque.

(b) Composition. The Chief Judge of the Tribal Court or an Associate Judge appointed by Tribal Council will preside over the Youth Path to Wellness Court. The Youth Path to Wellness Team, composed according to the Youth Path to Wellness Policies and Procedures Manual, will assist in day-to-day operations and development of the Youth Path to Wellness Court.

(c) Court Sessions. Participants in the Youth Path to Wellness Court will appear regularly before the Judge throughout the duration of their participation.

(d) Policies and Procedures. The Youth Path to Wellness Team shall promulgate policies and procedures to address the issues of confidentiality, treatment, incentives and sanctions, community involvement, and all other necessary components of evidence-based Juvenile Healing to Wellness Courts. The Youth Path to Wellness Court will adhere to all rules and guidelines of the Youth Path to Wellness Policies and Procedures Manual.

Subpart C Jurisdiction of the Tribal Court

C-1 Territorial Jurisdiction of the Tribal Court

Jurisdiction of the Pueblo of Pojoaque Tribal Court shall extend to all territory within the present exterior boundaries of the Pueblo and all roads, water and to any lands which may be added to the Pueblo in the future or which may become subject to the jurisdiction of the Pueblo.

C-2 Personal Jurisdiction

(a) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, or corporation.

(b) Subject to any contrary provisions, exceptions or limitations contained in either federal law or as expressly stated elsewhere in this Law and Order Code, the Tribal Court shall have jurisdiction over the following persons:

1. Any person residing, located or present within the Pueblo for:

   A. Any civil cause of action; or

   B. Any charge of criminal offense prohibited by this code or other ordinance of the Pueblo when the offense is alleged to have occurred within the Pueblo.

2. Any person who transacts, conducts, or performs any business or activity within the Pueblo, either in person or by an agent or representative, for any civil cause of action or charge of criminal offense for any act expressly prohibited by this Law and Order Code or other ordinances adopted by the Tribal Council.

3. Any person who owns, uses or possesses any property within the exterior boundaries of the Pueblo, f or any civil cause of action or charge of criminal offense prohibited by this Code of other ordinances of the Tribe arising from such ownership, use or possession.

4. Any person who commits a tortious act or engages in tortious conduct within the exterior boundaries of the Pueblo, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

5. Any person who commits a criminal offense prohibited by this code or other ordinance of the Pueblo, by his or her own conduct or the conduct of another for which he is legally accountable, if:

   A. The conduct occurs either wholly or partly within the Pueblo;

   B. The conduct which occurs outside the Pueblo constitutes an attempt, solicitation, or conspiracy to commit an offense within the Pueblo, and an act in furtherance of the attempt or conspiracy occurs within the Pueblo; or

C. The conduct which occurs within the Pueblo constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by this Code or ordinances of the Pueblo and such other jurisdiction.

(c) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

C-3 Exclusive Original Jurisdiction

(a) The Pueblo Courts shall have exclusive original jurisdiction in all matters in which the Pueblo or its officers or employees are parties in their official capacities.

(b) Nothing contained in Subsection (a) or elsewhere in this Code shall be construed as a waiver of the sovereign immunity of the Pueblo or its officers or enterprises unless specifically denominated as such.

C-4 Actions By or Against Pueblo Officers or Employees

(a) In any action otherwise authorized by or against the Pueblo or its officers or employees arising from the performance of their official duties, the following modifications to the rules or procedures set forth in this Law and Order Code shall apply:

1. Neither the Pueblo nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.

2. Neither the Pueblo nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose.

3. No civil action brought against the Pueblo or its officers and employees arising from the performance of their official duties shall be tried before a jury. All such actions shall be tried before a Tribal Court Judge.

4. In an action against the Pueblo, or its officers or employees in their official capacity, service of process must be accomplished by delivering the Petition and the Summons to the Pueblo of Pojoaque Legal Department during normal business hours.

C-5 Civil Jurisdiction

(a) The Tribal Court shall have jurisdiction over all civil causes of action.

(b) Personal jurisdiction shall exist over all persons who are Indians, or all persons, who consent to the jurisdiction of the Tribal Court. The act of entry upon territory within the

jurisdiction of the court shall conclusively be deemed consent to the jurisdiction of the Court with respect to any civil action arising out of such entry.

(c) The act of entry upon territory within the jurisdiction of the court by an off-reservation seller or agent of the seller to deliver goods shall conclusively be deemed consent by the seller to the jurisdiction of the Tribal Court for any dispute arising out of the sales, regardless of where the contract was entered into.

C-6 Criminal Jurisdiction

The Tribal Court shall have criminal jurisdiction over all offenses enumerated in this Code and any subsequent ordinance adopted by the Pueblo when committed within the jurisdiction of the court by any Indian, any other person to the fullest extent allowed by any current or future federal or state law, statute, regulation or case.

C-7 Probate Jurisdiction

The Tribal Court shall have probate jurisdiction over all of the real and personal property located within the jurisdiction of the Court at the time of death of a decedent and the personal property, wherever located, of any member of the Pueblo who is a resident of the Pueblo at the time of death.

C-8 Juvenile Jurisdiction

(a) The Tribal Court shall have original jurisdiction in all proceedings and matters relating to need for supervision, foster care, training, status offenses and other matters not relating to delinquent acts affecting Indians or members under the age of eighteen (18), when such children are residing within the jurisdiction of the Court. Jurisdiction over a juvenile relative to a delinquent act shall be the same as for criminal jurisdiction. Juvenile Jurisdiction shall be exercised consistent with the provisions of the Indian Child Welfare Act of 1978, P.L. 95-608.

(b) The Tribal Court shall accept and exercise any portion or incident of jurisdiction transferred to or shared with the Tribal Court, generally or in any particular case by any state, federal or other tribal court.

C-9 Service of Process

Service of Process may be made upon any person subject to the Pueblo Court's jurisdiction under this subsection by:

(a) Personally serving the summons upon the respondent who resides outside of the exterior boundaries of the Pueblo, such service having the same force and effect as though service had been made personally within the Pueblo's exterior boundaries;

(b) Certified mail, return receipt requested, upon the respondent who resides outside of the exterior boundaries of the Pueblo; or

(c) Through published notice in a newspapers within the jurisdiction of the respondent's last known address.

(d) Nothing in this subsection limits or affects the right to serve process in any other manner.

C-10 *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court Jurisdiction

(a) The Pueblo of Pojoaque Path to Wellness Court may exercise jurisdiction over individuals who:

1. Meet the eligibility criteria of the Pueblo of Pojoaque Path to Wellness Court Policies and Procedures Manual; and

2. Are accepted for admission by the Path to Wellness Team.

(b) Individuals may be referred to the Path to Wellness Court by:

1. The Pueblo of Pojoaque Tribal Court or another court;

2. Social Services, Tribal Police, or other Pueblo of Pojoaque Agency; or

3. Self-referral.

(c) Pueblo of Pojoaque Path to Wellness Court participation may be ordered as:

1. Part of a suspended sentence or deferred conviction after a guilty or no contest plea in the Pueblo of Pojoaque Tribal Court;

2. A requirement of pre-prosecution diversion;

3. Part of a Pueblo of Pojoaque Social Services Case Plan; or

4. A requirement after self-referral.

(d) Continuing Jurisdiction. Path to Wellness Court participants, including self-referrals, must agree to the continued jurisdiction of the Path to Wellness Court throughout the duration of the program. In the event that a participant is terminated from the Path to Wellness Court, the case will be sent to Tribal Court for adjudication.

C-11 (***) *Wen Hey Kha Wosatsi Khuu* (Youth Path to Wellness) Court Jurisdiction

(a) The Pueblo of Pojoaque Youth Path to Wellness Court may exercise jurisdiction over individuals who:

1. Meet the eligibility criteria of the Pueblo of Pojoaque Youth Path to Wellness Court Policies and Procedures Manual; and

2. Are accepted for admission by the Youth Path to Wellness Team.

(b) Individuals may be referred to the Youth Path to Wellness Court by:

1. The Pueblo of Pojoaque Tribal Court or another court;

2. Family and Children's Services, Tribal Police, Education, or other Pueblo of Pojoaque Agency; or

3. Self-referral or referred by a parent or legal guardian, as detailed in the Youth Path to Wellness Policies and Procedures Manual. An unemancipated juvenile must have permission of a parent or legal guardian to self-refer to the Youth Path to Wellness.

(c) Pueblo of Pojoaque Youth Path to Wellness Court participation may be ordered as:

1. If the participant is 18-20 years old:

A. Part of a suspended sentence or deferred conviction after a guilty or no contest plea in the Pueblo of Pojoaque Tribal Court;

B. A requirement of pre-prosecution diversion;

C. Part of a Pueblo of Pojoaque Family and Children's Services Case Plan; or

D. A requirement after self-referral.

2. If the participant is under the age of 18:

A. Part of a suspended sentence or deferred juvenile finding after a plea of responsible in a juvenile delinquency matter in the Pueblo of Pojoaque Children's Court;

B. A requirement of pre-prosecution diversion;

C. Part of a Pueblo of Pojoaque Family and Children's Services Case Plan; or

D. A requirement after self- or parental-referral.

(d) Continuing Jurisdiction. Youth Path to Well ness Court participants, including self-referrals, must agree to the continued jurisdiction of the Youth Path to Wellness Court throughout the duration of the program. In the event that a participant is terminated from the Youth Path to Wel1ness Court, the case will be sent to Tribal Court for proper adjudication.

Subpart D Administration of the Court

D-1 Court Rules

The Chief Judge of the Tribal Court shall promulgate rules to govern court proceedings, subject to the approval of Tribal Council, provided that such rules shall not abridge, enlarge or modify any substantive rights and shall preserve the right of trial by jury as provided in Subpart F-6 of this Code.

D-2 Tribal Court Fees & Costs

(a) The following shall constitute the fee schedule for Tribal Court cases.

1. Civil Petitions. There will be a one hundred and thirty-two dollar ($132.00) filing fee assessed on anyone filing a Civil Petition in Tribal Court against another party.

2. Domestic Relations. For domestic relations matters (e.g., divorce, custody, paternity, adoption) the filing fee is one hundred and thirty-seven dollars ($137.00).

3. Administrative Appeals. For appeals from administrative or regulatory decisions to the Tribal Court, the fee is one hundred and seventeen dollars ($117.00).

4. Foreign Judgments. The fee for filing a petition to enforce a foreign judgment is one hundred and seventeen dollars ($117.00).

5. Traffic Citation Hearings. For all traffic hearings, the court cost is seventy-five dollars ($75.00).

6. Default Judgments. There is a twenty dollar ($20.00) fee for a default judgment rendered by the Court.

7. Garnishments. There is a one hundred and seventeen dollar ($117.00) fee for each garnishment filed for recognition in the Tribal Court.

8. Appeals. The filing fee to appeal a case to the Court of Appeals is one hundred dollars ($100.00).

(b) The following shall constitute the other fees and costs for Tribal Court services.

1. Service of Process. There is a twenty dollar ($20.00) fee for service of process.

2. Bar Admission Fees. Attorneys shall pay the following fees in order to practice in the Tribal Court:

A. Seventy-five dollar ($75.00) fee due at admission.

B. Annual renewal fee (due January 15) of twenty-five dollars ($25.00).

C. No fee is required for attorneys appointed by Legal Services, attorneys employed by the Pueblo of Pojoaque, or lay advocates.

3. Copies. Each page of a legal document copied by the Court Clerk is twenty-five cents ($0.25). Copies of CDs or DVDs are five dollars ($5.00) each.

4. Certified Copies. The fee for certified copies of court documents shall be fifteen dollars ($15.00) plus fifty cents ($0.50) per page.

5. Research and Retrieval. For research and retrieval by Tribal Court staff, the fee is twenty-five dollars ($25.00) per hour, plus fifty cents ($0.50) page.

6. Notary Services. The fee for each signature that is to be notarized is five dollars ($5.00) per signature.

7. Returned Check Fee. A thirty-six dollar ($36.00) fee shall be imposed for any check returned by an individual's bank for non-payment.

D-3 Court Fees & Costs Guidelines

(a) The fees in Subpart D-2 are not exhaustive and nothing shall prevent the Court from assessing additional fees and costs in accordance with relevant provisions of the Law and Order Code. These fees may include, but are not limited to:

1. Witness fees;

2. Juror fees;

3. Incarceration costs; and

4. Fines for contempt of court.

(b) Tribal Officials or Tribal Representatives acting in an official capacity on behalf of the Pueblo are excluded from filing fees.

(c) No fee shall be charged for filing a Domestic Violence Petition.

(d) The Court may waive fees in cases of indigency.

(e) Should the Tribal Court rule in favor of the Petitioner, the Judge may order the Respondent to reimburse the Petitioner for filing fees and Court costs.

D-4 Coroners

(a) The Governor of the Pueblo of Pojoaque may appoint one or more coroners to serve the Pueblo of Pojoaque. Such coroners shall serve without pay but may be reimbursed for actual and necessary expenses upon presentation of proper vouchers of the Governor of the Pueblo.

(b) Whenever a coroner is informed that an Indian has died within the Pueblo, the coroner shall go to the place where the body is located and inquire into the cause of death.

(c) After inspecting the body and conferring with a physician, if the coroner himself is not a physician, the coroner shall make a written report stating the following facts, if known:

1. The name and census number of the dead person;

2. When and where he died and the circumstances of his death;

3. The cause of death;

4. Who caused the death, if caused by act, whether criminal or not;

5. What property is found on the body, other than clothing of ordinary value; and

6. Where the coroner is not a physician, the name and address of any physician consulted.

(d) The coroner shall submit copies of the report to the Pueblo of Pojoaque Police, to the Governor and to the Bureau of Indian Affairs Agency Superintendent.

D-5 Tribal Police

The Governor of the Pueblo shall be recognized as commander of the Tribal Police of the Pueblo of Pojoaque and shall be held responsible for the general efficiency and conduct of the members thereof. It shall be the duty of the Governor or his duly authorized representatives to keep himself informed as to the efficiency of the Tribal Police in the discharge of their duties, to subject them to regular inspection, to inform them of their duties and keep a strict accounting of the equipment issued them in connection with their official duties. It shall be the duty of the Governor to detail such Indian Policemen as may be necessary to carry out the orders of the Tribal Court and to preserve order during Court sessions. The Governor shall investigate all reports and charges of misconduct on the part of Pueblo policemen and shall exercise such proper disciplinary measures as may be consistent with existing regulations.

D-6 Police Training

(a) It shall be the duty of the Governor to maintain from time to time, as circumstances require and permit classes or instruction for the Tribal Policemen. Such classes shall familiarize the

policemen with the manner of making searches and arrests, the proper and humane handling of prisoners, the keeping of records of offenses and the duties of the police in relation thereto and other subjects of importance for efficient police duty. It shall further be the purpose of the classes to consider methods of preventing crime and of securing cooperation of Pueblo of Pojoaque residents in establishing better social relations.

1. A candidate must be in sound physical condition and of sufficient size and strength to perform the duties required.

2. He must possess courage, self-reliance, intelligence, and a high sense of loyalty and duty.

3. He must never have been convicted of a felony, nor have been convicted of any misdemeanor for a period of one year prior to appointment.

(b) The duties of a Pueblo policeman shall be:

1. To obey promptly all orders of the Tribal Police commissioner or the Governor when assigned to that duty;

2. To lend assistance to brother officers;

3. To report and investigate all violations of any law or regulation coming to his notice or reported for attention;

4. To arrest all persons observed violating the laws and regulations for which he is held responsible;

5. To inform himself as to the laws and regulations applicable to the Pueblo of Pojoaque and the laws of arrest;

6. To prevent violations of the laws and regulations;

7. To report to his superior officer all accidents, births, deaths or other events or impending events of importance;

8. To abstain from the use of intoxicants or narcotics and to refrain from engaging in any act that would reflect discredit upon the Tribal Police Department;

9. To refrain from the use of profane, insolent, or vulgar language;

10. To use no unnecessary force or violence in making an arrest, search or seizure;

11. To keep all equipment furnished to him in reasonable repair and order;

12. To report the loss of any and all property issued by the Federal Government in connection with official duties; and

13. To collect and issue receipts for bail.

D-7 Tribal Ranger

The Governor of the Pueblo of Pojoaque shall serve as the official appointing authority for all Tribal Rangers and shall bear full responsibility for their conduct, performance, and accountability. The Governor, or their designated representatives, shall actively monitor the duties and effectiveness of the Tribal Rangers through regular evaluations, field inspections, and oversight of operational activities. Clear directives shall be issued to ensure Rangers understand their responsibilities, and accurate records shall be maintained for all equipment and resources assigned in the course of their official duties.

Tribal Rangers shall be deployed as needed to safeguard Pueblo lands, protect natural and cultural resources, and uphold community safety. Their assignments may include enforcement of environmental, conservation, and land use regulations, as well as support for the execution of Tribal Court orders when applicable. The Governor shall review all reports and allegations of misconduct involving Tribal Rangers and shall administer disciplinary actions in accordance with established tribal policies and procedures

D-8 Tribal Ranger Training

(a) It shall be the duty of the Governor to establish and maintain, as circumstances require and permit, training programs for Tribal Rangers. These programs shall ensure that Rangers are properly prepared to carry out their duties in accordance with tribal law. Training shall include:

1. Enforcement procedures for tribal laws and ordinances;
2. Proper handling of cultural and historical resources, including sacred sites and burial grounds;
3. Environmental protection and land management practices;
4. Emergency response protocols including search and rescue and wildfire support;
5. Community outreach and cultural education to promote tribal heritage and pride;
6. Compliance with tribal, state, and federal environmental laws (e.g., Clean Water Act, Endangered Species Act);
7. Investigation and citation procedures for environmental and land-use violations.

(b) Qualifications for appointment shall include:

1. Must be an enrolled member of a Federally Recognized Tribe;
2. Must be FLETC or State Law Enforcement Certified;
3. Must be in sound physical condition and capable of performing field duties;

4. Must demonstrate integrity, cultural awareness, and a strong commitment to tribal sovereignty and stewardship;
5. Must not have any felony convictions and must be free of misdemeanor convictions for at least one year prior to appointment.

(c) The duties of a Tribal Ranger shall include:

1. Enforcing tribal laws and ordinances under the authority of the Tribal Government;
2. Reporting to the Chief of Police or their designee;
3. Patrolling tribal lands, cultural sites, and trust lands to prevent illegal dumping, poaching, and environmental damage;
4. Safeguarding sacred sites, burial grounds, and traditional use areas from unauthorized access or vandalism;
5. Assisting in public safety efforts including search and rescue, wildfire support, and rural incident response;
6. Supporting tribal police in crime prevention and patrol duties;
7. Conducting investigations and issuing citations for environmental violations;
8. Educating the community and visitors about tribal lands and cultural heritage;
9. Promoting cultural pride and intergenerational knowledge sharing;
10. Maintaining accurate records of enforcement actions and issued equipment;
11. Upholding tribal sovereignty and reducing reliance on external agencies;
12. Abstaining from conduct that would discredit the Tribal Ranger program, including the misuse of intoxicants or inappropriate language;
13. Keeping all issued equipment in good condition and reporting any loss or damage.

D-9 Dismissal

The Governor may remove any Tribal Policemen for any noncompliance with the duties and requirements as set out in the police duty guidelines or for neglect of duty.

D-10 Return of Equipment

Upon resignation, death or discharge of any member of the Tribal Police, all articles or property issued him in connection with his official duties must be returned to the Governor or his representatives

Subpart E Court Officials

E-1 Officers of the Courts

Officers of the Pueblo of Pojoaque Tribal Court shall include:

(a) Judges, Attorneys, and law clerks;

(b) Court clerks and Court interpreters;

(c) Police Officers, Probation Officers and other persons when carrying out orders of the Court; and

(d) Bailiffs.

E-2 Court Clerk

(a) The Clerk of the Court is charged with the duty of assisting the lawful functioning of the Courts. Such duties shall include, but not be limited to the following:

1. Drafting complaints, subpoenas, warrants, writs or other orders of the Court;

2. Maintaining records of court proceedings;

3. Administering oaths;

4. Collecting accounting for fines and other property taken into the custody of the Courts;

5. Accepting bonds; and

6. Filing notices of appeal and petitions.

(b) Assistant Clerks of the Court may be employed as necessary.

E-3 Representation Before the Tribal Court

A person before the Tribal Court may represent himself or have another person or a professional attorney serve as his counsel.

E-4 Tribal Court Standards for Practitioners Appearing Before the Pueblo of Pojoaque Tribal Court

(a) Limited Representation. An attorney may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent. Limitations on the scope of representation may include drafting specific, discrete pleadings or other documents to be used in the course of representation without taking on the responsibility for

drafting all documents needed to carry the representation to completion. An attorney who agrees to prepare a discrete document under a limited representation agreement must competently prepare such a document and fully advise the client with respect to that document, which includes informing the client of any significant problems that may be associated with the limited representation arrangement. While limitations on the scope of representation are permitted under this rule, the attorney must explain the benefits and risks of such an arrangement and obtain the client's informed consent to the limited representation.

(b) Limited Entry of Appearance; Attorney's Duty. In all proceedings where an attorney appears for a client in a limited manner, that attorney shall disclose to the Court the scope of representation. The purpose of this rule is to permit attorneys to appear for clients in a limited manner and to alert the Court and opposing party of that limited role. Attorneys may give technical assistance and, when not prohibited, may prepare, without attribution, papers for filing by a self-represented litigant without violating the duty of candor. Even though an attorney's role may be limited to drafting a single document, the attorney is, however, bound by all of the rules that govern attorney conduct.

(c) Telephonic Hearing. An attorney may file a Motion for Telephonic Hearing with the Pueblo of Pojoaque Tribal Court, provided the motion is filed with the Court at least forty-eight (48) hours prior to the scheduled hearing. The decision to grant or deny the motion shall be in the sole discretion of the Court.

(d) Organization. Attorneys shall be on time, be prepared for all court appearances and have knowledge of the Pueblo of Pojoaque Law and Order Code, Court Rules, Rules of Evidence, and Rules of Procedure.

(e) Respect. Attorneys shall always be courteous and respectful to the Court and opposing parties.

(f) Compliance with Rules of Professional Conduct of Other Jurisdictions in which Attorney is Licensed to Practice. Attorneys shall be in compliance with the rules of professional conduct in all jurisdictions in which the attorney is licensed to practice.

(g) Candor Toward the Tribunal. Attorneys should be candid with the Court and should attempt to resolve, by agreement, differences relating to procedural and discovery matters. An attorney shall not knowingly:

1. Make a false statement of fact or law to the Court or fail to correct a false statement of material fact or law previously made to the Court;

2. Fail to disclose to the Court legal authority known to the attorney to be directly adverse to the position of the client and not disclosed by opposing counsel; or

3. Offer evidence that the attorney knows to be false; if an attorney, the attorney's client or witness has offered material evidence and the attorney comes to know of its falsity, the

attorney shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(h) Attorneys shall discourage and decline to participate in litigation that is without merit or is designed primarily to harass or drain the financial resources of the opposing party or the Pueblo of Pojoaque Tribal Court.

(i) Attorneys should avoid any communication, direct or indirect, about a pending case with a judge except as permitted by court rules or otherwise authorized by law.

(j) Attorneys should refrain from impugning the integrity of the judicial system, its proceedings, or its members. Failure to comply with the requirements of these rules may subject counsel to sanctions.

E-5 Legal Department and Paralegal Fees

(a) The Pueblo hereby establishes the Pueblo of Pojoaque Legal Department.

(b) The Pueblo of Pojoaque Legal Department hourly attorney fees are three hundred and fifty dollars ($350) and hourly legal assistant fees are one hundred and seventy-five dollars ($175).

E-6 Attorney-Client Privilege

Any Pueblo of Pojoaque General Counsel subpoenaed in any Court of Law shall assert, to the extent legally allowed, the attorney-client privilege.

E-7 Public Records

Except as otherwise provided in this Code, the Tribal Court Clerk shall keep open for inspection a record of all proceedings of each Court. Such record shall reflect the title of the case, the names and addresses of parties and witnesses, the substance of the complaint, the date of the hearing or trial by whom conducted, the finding of the Tribal Court or jury, and judgment or order entered. Unless specifically exempted by the Code, the record of the Court shall be public.

E-8 Copies of Laws

The Tribal Court shall have access to all Tribal, State and Federal Laws applicable to the conduct of persons within the exterior boundaries of the Pueblo of Pojoaque.

Subpart F Rules of Procedure – General

F-1 Issuance of Subpoenas

(a) Upon request of any party to the case or upon the Tribal Court's own initiative, the Tribal Court shall issue subpoenas to compel the appearance and testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant and necessary to the determination of the case, over which the court has jurisdiction. The Tribal Court Clerk may act on behalf of the Tribal Court and issue subpoenas which have been signed by a Judge and which are to be served within the exterior boundaries of the Pueblo of Pojoaque.

(b) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Tribal Court and it shall state the name of the evidence or witness to be subpoenaed, the title of the proceeding and the place where the witness is to appear or the evidence is to be produced.

F-2 Service of Subpoena

(a) A subpoena may be served at any place within or outside of the exterior boundaries of the Pueblo of Pojoaque, but any subpoena to be served outside the Pueblo shall be issued personally by a Judge of the Tribal Court.

(b) A subpoena may be served by any Tribal Police Officer or other person appointed by the Tribal Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his place of residence with any competent person eighteen (18) years of age or older, who also resides there.

F-3 Failure to Obey Subpoena

In the absence of a justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his arrest.

F-4 Witness Fees

(a) The Court, in its sole discretion, may order a party to reimburse witnesses for testifying in a case.

(b) Any witness fees and expenses shall be paid to the witness upon completion of the trial. Such expenses may be taxed as costs against the defendant if he or she is found guilty; provided, however, that no defendant shall be incarcerated solely because of inability to pay such costs immediately.

F-5 Trial Procedures

(a) The time and place of Tribal Court sessions, and all other details of judicial procedure shall be set out in rules of the Court adopted pursuant this Subpart.

(b) The Tribal Court shall not be bound by common law rules of evidence, or the rules of evidence which pertain in state or federal courts.

F-6 Jury Trials

(a) Request for Jury Required. A jury trial shall be held if not otherwise specifically prohibited by the Law and Order Code and:

1. Requested by either party in a civil case; or

2. Requested by the defendant in a criminal case where imprisonment is a possible penalty for the offense charged.

(b) Jury Pool. A list of eligible jurors shall be prepared and maintained by the Tribal Council or its representative. Any person over the age of twenty-one (21) years, not subject to judicial restraint by any Court, and who resides within the Pueblo of Pojoaque or is a Pueblo of Pojoaque Tribal Employee may be listed as an eligible juror.

(c) Formation. Juries will be comprised of six (6) jurors and one alternate. A person may be excused from serving on a jury upon good cause shown under oath to a Judge. Jurors whose employers provide for compensated leave for jury service shall not be excused by the Court because of work-related responsibilities, except under extraordinary circumstances. The Judge shall consider the needs of the Court to maintain an adequate jury pool before allowing jurors to be excused. Elected Tribal Officials shall be exempt from serving on juries during their terms of office.

(d) Random Selection. The Clerk of the Court will randomly select a minimum of twenty-five (25) names from the jury pool pursuant to a jury pool records maintenance schedule.

(e) Juror Summons. The Court shall issue summons and thereby notify persons selected for jury service. Persons selected for jury service shall be summoned by mail or personal service. Persons who do not appear after proper notice of jury service shall be subject to contempt of Court.

(f) Selection. The Court Clerk shall notify the Court and counsel of the names of the members of the jury pool appearing for selection. In selecting a jury from among the panel members, in all instances the Judge shall conduct the initial questioning of the jurors to establish eligibility, ability to serve and potential bias. When the Court determines that a juror cannot serve, the juror shall be excused. The Judge may use his or her discretion to permit the parties to ask questions and, moreover, may limit examination of jurors when the Judge believes such examination to be improper or unacceptably time consuming.

(g) Challenges/Excusals. Each party shall have the right to a maximum of two (2) preemptory challenges for jurors, for which no reason need be given and which the Judge may not refuse to grant.

(h) Compensation of Jurors. Every person who is required to attend Court for selection or service as a juror shall be entitled to fees for each day, unless otherwise compensated through Tribal ordinance. Jurors whose employers provide for compensated leave for jury service shall not be entitled to fees. Jurors shall be compensated at a rate recommended by the Tribal Judge and provided in the rules of the court. Compensation of jurors is considered to be a court cost that shall become the responsibility of the party requesting a jury.

(i) Juror Oath. The jury shall be sworn in by the Court. Any juror who violates the oath may be held in contempt of Court.

(j) Juror Instructions and Deliberations. The Judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact in the basis of that law. The jury shall deliberate in secret and return a verdict of "guilty" or "not guilty." The Tribal Judge shall render judgment in accordance with the jury verdict. A jury may render a verdict by majority vote in civil cases. In criminal cases a verdict of "guilty" must be either unanimous or by vote of five (5) to one (1).

(k) Discharging Jurors. When the jury has reached a verdict or has determined that it shall be unable to do so, even with additional deliberation, the Court shall discharge the jurors from service.

F-7 Contempt of Court

(a) The Judges of the Pueblo Courts may rule a person in contempt of Court if he willfully and unjustifiably disrupts, obstructs or otherwise interferes with the due and orderly course of proceedings in the courtroom, after being advised by the Court to cease the interference.

(b) All rulings of and sentences for contempt shall be announced immediately after the acts of contempt occur.

(c) A person found in contempt of court may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five days (365) days or to pay a fine not to exceed five thousand dollars ($5,000.00), or both.

F-8 Notice Code

(a) Findings and Purpose.

1. Findings. The Pueblo has a compelling interest in protecting tribal sovereignty and jurisdiction and the validity of tribal laws. Tribal sovereignty and jurisdiction or the validity of tribal law may be questioned in cases in the Tribal Court in which the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo is not a party. With adequate, timely, and uniform notice of cases in the Tribal Court that question tribal

sovereignty and jurisdiction or the validity of tribal law, the Pueblo can effectively assess whether and how to participate in such cases.

2. Purpose. The purpose of this Code is to provide the Pueblo with adequate, timely, and uniform notice of any and all cases in the Tribal Court that question tribal sovereignty and jurisdiction or the validity of any tribal law and in which the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo is not a party.

(b) Notice Required.

1. Court to Inform Parties. In any action or proceeding in which the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo is not a party but which questions tribal sovereignty or jurisdiction or the validity of any tribal law, the Tribal Court will give notice in writing of the action or proceeding to the Office of the Governor and to the Legal Department. The Tribal Court will also serve all parties with a copy of the notice given. Such notice will identify the action or proceeding and will include a brief written explanation of the grounds upon which tribal sovereignty or jurisdiction or the validity of tribal law is being questioned. Any party giving notice under this law will simultaneously file proof with the Tribal Court that notice has been given as required by this Code.

2. Continued Notice. If notice is required under this Code, the Tribal Court or any party will timely serve copies of all subsequent filings and orders in the case on the Legal Department.

(c) Manner and Timing of Notice. Notice required under this Code will be given in writing and simultaneously with the raising of a question about tribal sovereignty or jurisdiction or the validity of any tribal law.

(d) Tribal Participation Following Notice.

1. Intervention. Upon timely motion, the Pueblo may intervene as a matter of right in any action or proceeding in the Tribal Court that questions tribal sovereignty or jurisdiction or the validity of any tribal law. Upon intervening under this Code, the Pueblo may assert any and all available claims and defenses and may present any and all admissible evidence relating to the question of its sovereignty or jurisdiction or the validity of any tribal law, and is entitled to the same relief, including costs, as if the Pueblo had instituted a separate action or proceeding; provided that, the Pueblo will not be required to pay costs of litigation in any action or proceeding in which it has intervened under this Code. Intervention under this Code does not abridge, limit, or otherwise affect the right of the Pueblo to commence, maintain, defend, or otherwise intervene in actions or proceedings in the Tribal Court.

2. Amicus Curiae. Upon timely motion or application, the Tribe may appear as *amicus curiae* (friend of the court) in any action or preceding that questions tribal sovereignty or jurisdiction or the validity of any tribal law.

3. Information Sharing and Consultation. In any action or proceeding in the Tribal Court that questions tribal sovereignty or jurisdiction or the validity of any tribal law in which the Pueblo does not intervene or appear as *amicus curiae*, the Pueblo may nevertheless share important knowledge with any party involved in the action or proceeding. This could include assistance in responding to formal discovery requests or acting as an informal consultant.

4. No Participation. The Pueblo may timely determine that it is in the best interest of the Pueblo not to intervene, appear as *amicus curiae*, or otherwise participate in an action or proceeding in the Tribal Court that questions tribal sovereignty or jurisdiction or the validity of any tribal law.

5. Authority to Determine Participation. Before determining participation on behalf of the Pueblo under this Code in any specific action or proceeding in Tribal Court, the Chief Legal Counsel will obtain the approval of the Governor and of the Tribal Council for cases involving challenges to tribal sovereignty.

6. Timeliness of Participation Determinations. Unless the Tribal Court orders otherwise, where timely and proper notice has been given under this Code, the Pueblo will notify the Tribal Court and parties in writing within sixty (60) days of receipt by the Pueblo of such notice of any determination to participate in any action or proceeding by way of intervention or appearance as *amicus curiae*.

(e) Failure to Give Notice.

1. Failure to Give Notice Not Jurisdictional or Waiver of Rights. The failure of the Tribal Court or a party to give notice as required by this Code does not deprive the Tribal Court of jurisdiction and is not a waiver or modification of any rights otherwise timely asserted by any party. Any notice given under this Code is not a substitute for, or a waiver or a modification of, any other pleading requirement under tribal law.

2. Late Notice. If the Tribal Court or a party discovers that notice to the Pueblo under this law should have been but has not been given, the Tribal Court or party will promptly give notice in writing to the Pueblo as required by this Code. The Tribal Court may stay the action or proceeding at any stage to allow compliance with this Code. If final judgment has already been entered, the Pueblo may motion or apply for rehearing as of right, the Tribal Court will entertain promptly any such motions or applications for rehearing by the Pueblo, and in disposing of such motions the Tribal Court, for good cause shown, may vacate a judgment or any portion thereof.

3. Civil Sanctions. The Tribal Court may impose civil sanctions on any party for willful or unreasonable failure to give notice as required by this Code, and may use other reasonable means to cure any significant harm caused by failure to give notice as required by this Code.

(f) Tribal Jurisdiction and Sovereign Immunity from Suit Unaffected.

1. Jurisdiction. Nothing in this Code shall be deemed or construed to deprive, limit, or extend the jurisdiction of the Tribal Court.

2. Sovereign Immunity from Suit. Notice required under this Code does not authorize a party to name the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo as a party to any action or proceeding. Nothing in this Code shall be deemed or construed as a waiver or limitation of the sovereign immunity from suit of the Pueblo or any political subdivision, department, agency, instrumentality, subsidiary, officer, employee and/or legal entity of any nature whatsoever of the Pueblo.

Subpart G Rules of Civil Procedure

G-1 Scope of Rules; Construction; Alternate Source

(a) Scope. These rules govern the procedure in all civil actions and proceedings in the Tribal Court. These rules must be applied to resolve disputes efficiently, reveal the truth, and treat all parties fairly and without prejudice. All cases before the Tribal Court will be conducted in accordance with the Law and Order Code and Pueblo of Pojoaque customs and traditions. These rules apply in criminal matters when no different rule is specified in the Rules of Criminal Procedure contained in Subpart H of the Code.

(b) Mission of the Court. The mission of the Tribal Court is to be fair and unbiased, resolve disputes, maintain rights, and correct wrongs for all cases brought before the Court. Through Tribal laws, rules of court, case law, Tribal custom and common sense in the context of all relevant circumstances, the Pueblo seeks to deal justly in order to protect all inherent rights of the parties.

(c) Construction. These rules will be liberally interpreted and administered to secure a just, speedy, and inexpensive determination of every action. At every stage of the proceeding, the Court may disregard any technical failure to comply with these rules which does not substantively affect the rights of the parties or outcome of the proceedings.

(d) Alternate Source for Rules. In a situation where these rules do not contain a procedure, the parties and the Court may agree on a procedure, or the Court may determine the procedure that will be followed. The Federal Rules of Civil Procedure will apply to any procedures or matters that are not specifically covered in these rules, as long as the Federal Rules do not conflict with these rules or with general principles of fairness and justice as determined and interpreted by the Tribal Court.

(e) Citation Form. These rules shall be known as the Pueblo of Pojoaque Rules of Civil Procedure and will be cited as “PPRCP”.

G-2 Sovereign Immunity

Nothing in these rules shall affect the right of the Pueblo to assert immunity from suit by virtue of its status as a sovereign. The requirements for waivers of sovereign immunity are contained in Subpart J-3.

G-3 Time

(a) How Time is Computed. Whenever a rule or an order requires that an action is taken within a certain number of days:

1. Do not include day of the event that starts the time period;

2. Count every calendar day, including Saturdays, Sundays, and legal holidays; and

3. Include the last day of the time period, but if the last day is a Saturday, Sunday, or Court holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Court holiday.

4. Any time period ten (10) days or shorter will not include Saturdays, Sundays, or Court holidays.

(b) Extensions of Time. Upon the request of a party and for good cause, the Court may allow an extension of any time limit described in these rules.

G-4 Definitions

In addition to the definitions provided for in Subpart A-3 of the Law and Order Code, the following definitions apply in this Subpart:

(a) Amendment. A change or addition to a Petition, Answer, counter-claim, or other court pleading.

(b) Answer. The document filed by the party defending against a claim or Petition.

(c) Counter-Claim. A claim or Petition by a respondent against a plaintiff.

(d) Cross-Claim. A claim against another party on the same side of the lawsuit: a respondent against another respondent or a plaintiff against another plaintiff.

(e) Default. Failure to defend a case within the time allowed under the rules or failure to appear in Court when ordered to do so.

(f) Execution. Enforcement of a judgment.

(g) Judgment. The decision of the Court on a case.

(h) Party. A person or company that is being sued or is suing; either the plaintiff or defendant in a criminal case or the petitioner or respondent in a civil case.

(i) Petition. The written statement of facts and request for Court action filed to start a civil lawsuit

(j) Petitioner. The party who files a civil petition.

(k) Pleading. Any papers filed or required to be filed with the Court by a party.

(l) Process. Legal document or documents asserting the Court's power (jurisdiction) to compel a person to appear in the Tribal Court.

(m) Respondent. The party against whom the petitioner files a civil Petition.

(n) Service. The manner in which delivery of the Summons or other pleading is made to the other party.

(o) Stipulation. An agreement between the parties that is submitted to the Court.

(p) Subpoena. An order of the Court requiring a witness to attend and to testify at a hearing or trial.

(q) Summons. The document that tells a respondent that he or she is being sued and asserts the power of the Court to hear and determine the case.

(r) Third-Party Petition. A Petition filed by the respondent against a third-party (i.e., a person not presently a party to the lawsuit) alleging that the third party is or may be liable for all or part of the damages which the petitioner may win from the respondent.

(s) Waive. Intentionally giving up a claim or right, either by a statement or through action or inaction.

G-5 Jurisdiction

(a) The Tribal Court is a court of general jurisdiction.

(b) The Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Law and Order Code, the Indian Civil Rights Act of 1968, and other applicable Federal law.

G-6 Statute of Limitations

(a) Unless otherwise specifically provided for, a civil lawsuit must be filed with the Court within three (3) years of the event at issue in the case. The three-year period will be counted

from the date on which the event was first known to the injured party or should have been known to a reasonable person in the injured party's position.

(b) Civil suits filed more than three (3) years after this time period will be dismissed.

(c) This Section shall not apply to claims brought by the Pueblo of Pojoaque.

(d) Any action against the Pueblo or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action accrued.

G-7 Representation

(a) Pro Se Appearance. Parties may represent themselves.

(b) Non-Attorney Appearance. A party may be represented by a non-attorney advocate with the Court's permission. Whenever a non-attorney represents a party, that person will file a written entry of appearance showing his or her name, address, and telephone number.

(c) Attorney Appearance. Permission for an attorney to practice in the Tribal Court is granted according to the provisions of the Tribal Law and Order Code, Subpart E-4. Whenever an attorney represents a party, the attorney will file a written entry of appearance showing the attorney's name, address, and telephone number. For the purpose of this rule, the filing of any pleading or paper signed by counsel and showing the attorney's name, address, and telephone number constitutes an entry of appearance.

(d) Withdrawal of Representation Requires Court Order. An attorney or non-attorney advocate must obtain an order permitting withdrawal. The Court may place conditions on an order approving withdrawal as justice requires.

(e) Limited Representation. The Tribal Court permits limited-scope representation by a professional attorney according to the standards laid out in Subpart E-4(a)–(b). The attorney shall enter an appearance that outlines the limits of representation.

(f) Sanctions. The Court may impose appropriate sanctions upon an unrepresented party or his or her attorney who is found to have filed a lawsuit, motion, or any other papers for an improper or frivolous purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Sanctions may include a fine of up to five hundred dollars ($500), court costs, and attorneys' fees incurred by the opposing party that were required to resolve the issue.

G-8 Interpreters

If a party or a party's witness requires an interpreter, the party requiring the interpreter must arrange and provide for interpretation at the party's own expense. If testimony is to be interpreted, the interpreter must be court-certified, except with the Court's permission.

G-9 Telephonic Appearance

The Court may hear any matter by telephone conference call where it serves the interests of justice.

G-10 Start of a Civil Case

(a) Beginning a Lawsuit. A party starts a civil lawsuit by filing a written Petition with the Tribal Court along with any filing fees. The Court may waive filing fees for good cause. Every Petition should contain:

1. The name, address, and telephone number of the petitioner and the respondent;

2. A statement of the facts at issue;

3. A statement describing the rights or laws that the petitioner believes were violated (if known);

4. A statement of what the petitioner is asking the Court to order or decide, such as the approximate amount of money requested, return of property, a restraining order, or a child custody determination; and

5. The signature of the petitioner.

No special wording or format is required but petitioners are encouraged to use the Tribal Court's Petition form. The Court Clerk may help petitioners by supplying necessary forms for filing a Petition.

(b) Summons. When a Petition is filed, the Court Clerk will issue and sign a Summons and give it to Tribal Police to be served on the respondent. The Summons will give notice to the respondent that he or she is required to answer the Petition within a specified time and that failure to respond may result in a default judgment.

G-11 Service and Filing

(a) Service. In order to proceed with the lawsuit, the petitioner must serve (deliver) a copy of the Petition and Summons to each respondent within ninety (90) days of the filing date.

(b) Who may Serve the Papers. Service may be made by a law enforcement officer or any person who is not a party and is eighteen (18) years of age or older.

(c) How Served. The Petition and Summons must be served on the respondent in a way that ensures the respondent knows about the lawsuit and has a reasonable opportunity to defend against it. Service will be made as follows:

1. Personal Service: Service on an individual party or a non-Pueblo business may be made by delivering the documents to the party in person, or on a person over fifteen (15) years old at the party's home or principal place of business. If a person personally refuses to

accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the documents served. The person who delivered the Summons and Petition shall file a statement with the Court that he or she served the papers, stating the name of the person served, the place, date, and time of service, and signing the return of service under penalty of perjury. This is the proof of service.

2. Certified Mail: Service may be made by registered or certified mail, return receipt requested, provided that the envelope is addressed to the respondent and that the respondent signs a receipt for it. The return receipt will be proof of service. Service by mail is complete on the date the receipt is signed by the respondent. Service upon a business of the Pueblo must be made by certified mail.

3. Publication: Service by publication may be made for good cause shown upon order of the Court by publishing the contents of the Summons in a local newspaper of general circulation at least once per week for four (4) weeks and by leaving a copy of the Petition with the Court for the party.

(d) Long-Arm Service. Any person subject to the jurisdiction of the Pueblo of Pojoaque Tribal Court may be served outside the territorial jurisdiction of the Pueblo in the manner provided and with the same force and effect as if the service had been made within the exterior boundaries of the Pueblo of Pojoaque.

(e) Time for Service. An action may be dismissed without prejudice if service is not completed within ninety (90) days from the date of the filing of the Petition, unless good cause is shown for the delay or as justice requires. The Court's dismissal of the case means that the petition can be brought again but a new Petition will have to be filed and any fees paid previously will not be applicable to the filing of the new case.

(f) Papers other than Petition. A copy of every pleading or document filed with the Court must be provided to the other party or their advocate, unless the Court orders otherwise.

(g) Service on Officers or Employees of the Pueblo of Pojoaque. If the party to be served is an officer or employee of the Pueblo in their official capacity, service must be made by delivering a copy of the Petition and Summons pursuant to Subpart C-4.

(h) Serving a Minor or Incompetent Person. If the party to be served is a minor or has a guardian, service must be made on his or her parent, guardian, or custodian.

(i) Filing by Fax or E-mail. If less than ten (10) pages total, pleadings may be filed by fax to the Tribal Court. A facsimile copy has the same effect as any other pleading. Pleadings and proposed orders may be electronically filed with the Court Clerk.

G-12 Pleadings, Motions, and Orders

(a) Pleadings. Petitions, counter-claims, cross-claims, and third-party Petitions are permitted. An Answer must be filed to a Petition, a counter-claim, a cross-claim and a third-party Petition. The Court Clerk may help petitioners by supplying necessary forms for filing a Petition.

(b) Motions. Any requests for the Court to issue an order or take action must be in writing and contain a statement of the events at issue and a statement asking the Court for some relief or a specific order. No technical wording is required. Unrepresented parties are encouraged to use the standard motion form.

(c) Construction of Pleadings. All pleadings will be interpreted so as to do substantial justice.

(d) Orders. An order includes every instruction of the Court whether included in a judgment or not, and may be made with or without notice to adverse parties and may be vacated or modified with or without notice.

G-13 Answering the Petition

(a) Filing an Answer. Within twenty (20) days after the respondent receives a copy of the Petition and Summons, he or she must file a written Answer to the Petition and serve a copy on the petitioner.

1. In any action against the Pueblo or its corporations, businesses, or officers or employees in their official capacities, the respondent shall have sixty (60) days to file a written Answer to the Petition and serve a copy on the petitioner.

2. An extension of time to file an Answer may be granted by the Court upon a showing of good cause.

(b) Signature and Contact Information. The respondent must sign the Answer and provide a mailing address, telephone number, and email address, if applicable.

(c) Defenses and Denials. In the Answer, the respondent will state in short and plain terms his or her defenses to each of the petitioner's claims. The Answer will admit or deny the statements. The respondent may deny a part of a statement and admit the rest. If the respondent does not have knowledge about a statement or claim, he or she will state that. The respondent has a duty to admit what he or she knows is true.

(d) Defenses. If applicable, the respondent must raise the following defenses before filing an Answer:

1. Lack of personal jurisdiction;

2. Insufficient or incomplete Summons and/or Petition; or

3. Insufficient service of Summons and/or Petition.

Any of the above defenses not raised before filing an Answer will be considered waived. If the respondent raises one of these defenses in a motion before filing an Answer, the time-limit to file an Answer will be suspended until the Court has ruled on the motion. The respondent may raise other defenses in the Answer.

(e) Affirmative Defenses. In responding to a pleading, a party should affirmatively state any defense, including (1) accord and satisfaction, (2) arbitration and award, (3) contributory negligence, (4) discharge in bankruptcy, (5) duress, (6) estoppel, (7) failure of consideration, (8) fraud, (9) illegality, (10) laches, (11) license, (12) payment, (13) release, (14) res judicata, (15) statute of frauds, (16) statute of limitations, (17) waiver, and any other matter constituting an avoidance or affirmative defense. If these affirmative defenses are not pled at the time the answer is filed, they may be asserted later with the Court's permission.

(f) Counter-Claim. A respondent may file a counter-claim against the petitioner following the same rules that apply to Petitions. A counter-claim must arise from the same events raised in the Petition. A counter-claim may be deemed waived if not filed as a counter-claim to the Petition.

(g) Motion for Judgment on the Pleadings. At any time, but not to delay trial, any party may ask the Court for a judgment on the pleadings. If, in a motion for judgment on the pleadings, matters outside the pleadings are presented to the Court, the motion will be treated as a Motion for Summary Judgment (Section G-35) and all parties will be given reasonable opportunity to present to the Court all material relevant to a Motion for Summary Judgment.

(h) Default Judgment. The respondent may be subject to a default judgment if he or she does not file an Answer.

G-14 Form of Pleadings

(a) Caption. Every pleading should contain a caption heading including the name of the Court, the title of the action, the Court file number (if known), and a designation as to what kind of pleading it is (e.g., Petition, Answer, Motion). All pleadings will contain the names of the parties. In the case of multiple parties, the name of the first party on each side may be used on all pleadings filed after the original Petition. Unrepresented parties are encouraged to use forms provided by the Court.

(b) Paragraphs. All claims or defenses should be made in numbered paragraphs. Each paragraph should be limited to a statement of a single set of circumstances. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

(c) Signatures. The signature of the party, or counsel, must be on a pleading submitted to the Court. The signature is a certification that the pleading is submitted in good faith, that the matters of fact or law are believed to be true and accurate, and that the pleading is based on a reasonable investigation of the statements of fact or law.

(d) Substantial Compliance. For unrepresented parties, or in the interests of justice, substantial compliance with the rules for form of pleadings shall suffice.

G-15 Amending Pleadings; Dismissing Petition

(a) Amending Before Trial. A petitioner may change the Petition without the Court's permission before the respondent files an Answer if a copy of the changed Petition is delivered to all parties according to the Rules for serving Petitions. After the respondent has answered the Petition, the Court may allow the petitioner to amend the Petition if the change would not be unfair to the respondent.

(b) Amending at Trial. When issues or evidence that were not raised in the pleadings are heard at trial, the Court may take such issues or evidence into account without amending the pleadings.

(c) Dismissing the Petition. The Court will allow a petitioner to withdraw the Petition and will dismiss the case at any time the petitioner requests unless the respondent has filed a counter-claim against the petitioner or dismissal of the case would otherwise be unfair to the respondent. The Court may order a petitioner who withdraws a complaint to pay all of the respondent's costs associated with the Petition.

(d) Involuntary Dismissal. If the petitioner fails to prosecute the case or to comply with these rules or a court order, a respondent may move to dismiss the case or any claim. Costs may be assessed against the petitioner.

G-16 Pre-Trial Conferences

The Court may order the attorneys and any unrepresented parties to appear for one or more pre-trial conferences whenever it appears that a conference might simplify the issues, discourage wasteful pre-trial activities, reduce trial time, or promote settlement of the case.

G-17 Parties

(a) Real Party in Interest. Every legal action must be carried out in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his or her own name without joining the party for whose benefit the action is maintained. Real parties in interest may include businesses and other entities.

(b) Guardian Ad Litem. When a minor or incompetent adult who does not have a guardian is a party, the Court shall appoint a guardian ad litem to represent the minor or incompetent person. The guardian ad litem does not have to be a professional attorney.

G-18 Adding Parties to a Case

(a) Joining Parties. To the extent possible, all interested parties, including businesses or other entities, may be joined in a case. Failure to join a party over whom the Court has no jurisdiction will not require dismissal of the case unless it would be impossible to reach a just result without that party. The failure to join a party may be taken into account to assure that justice is served.

(b) Intervention. A party may intervene and be treated as a party in cases where property in which the party has an interest may be affected or a question of law or fact common to a party's claim may be litigated. If a motion to intervene is granted, the other parties are allowed twenty (20) days after service to answer the pleading of the intervener.

(c) Substitution of Parties. If a party dies, becomes incompetent, transfers interest, or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

G-19 Discovery

(a) Purpose of Discovery. The purpose of discovery is to ensure that the parties have access to and share all information and evidence related to a case in order to resolve disputes efficiently and reveal the truth. Each party has an obligation to share all non-privileged information and evidence related to a case.

(b) Scope of Discovery. Parties may obtain discovery regarding any matter that is relevant to the case and not privileged, even if the information would not be admissible at trial, so long as the information requested appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Interrogatories. A party may submit written interrogatories (questions) to any other party who must answer them in writing, under oath, within thirty (30) days.

(d) Depositions. A party may take the oral deposition of an adverse party or non-party witness under oath, giving at least ten (10) days' notice and specifying the time and place of the deposition.

(e) Production, Entry, or Inspection. A party may request that another party produce any documents or things in his or her custody for inspection or copying or request permission to enter and inspect property reasonably related to the case. The opposing party shall reply within ten (10) days as to whether or not such requests will be allowed and if not, why not.

(f) Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense. The Court may order that the discovery cease or proceed only upon specified conditions.

(g) Failure to Make Discovery. If a party fails to respond or appear for discovery as provided in this rule, the opposing party may ask the Court for, or the Court on its own motion may issue, an order to compel the other party to perform. The Court may award costs. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order

that a certain fact, claim, or defense is deemed established or strike part of a claim or defense, dismiss the case, or, in an aggravated case, render a judgment by default against the non-complying party.

(h) Use of Discovery. Answers to interrogatories and depositions may be used in a motion, hearing, or trial to impeach testimony or for any relevant purpose.

(i) Continuing Duty to Supplement; Witness List. A party is under a continuing duty to supplement responses to discovery requests if the responding party obtains: (1) information that shows a prior response was incorrect or no longer true; (2) the identity and location of persons having knowledge of discoverable material; (3) the identity of each person expected to be called as an expert witness at trial; (4) the identity of any other person expected to be called as a witness at trial; and (5) the subject matter or substance on which testimony is expected.

Any witness who is not identified in accordance with this rule will not be allowed to testify except to prevent injustice or upon agreement of the parties.

G-20 Scheduling Cases for Trial

(a) Date for Trial. The Court will place the case on the Court calendar with or without the request of any party as long as all parties are given adequate notice of trial dates.

(b) Postponement. Upon motion of a party and for good cause shown, the Court may postpone (continue) a trial or proceeding. The Court may require the requesting party pay any cost associated with a postponement.

G-21 Consolidation; Separate Trials

(a) Consolidation. The Court may, upon motion of any party or its own motion, order that some or all of the issues of separate actions shall be tried together when there is a common issue of fact or law relating the actions or for judicial economy.

(b) Separate Trials. The Court may order a separate trial of a claim or issue to avoid prejudice or for convenience.

G-22 Evidence

(a) Form and Admissibility. All evidence admissible under the Federal Rules of Evidence or as otherwise specified in the Law and Order Code shall be admissible. The competency of witnesses to testify shall be similarly determined. The Court may admit otherwise inadmissible evidence if the interests of justice so require.

(b) Examination. At all hearings and trials, the testimony of witnesses shall be taken orally under oath. A party may call any person to be a witness and examine any witness on any relevant matter. A party may impeach his or her own witness.

Cross examination will be limited to the general scope of direct examination, provided, however, that full examination of all witnesses will be allowed on direct or cross examination to assure complete development of all relevant facts.

The Court may question witnesses to clarify issues and in the interests of justice.

(c) Physical Evidence. Written documents and other physical evidence shall be admitted at the Court's discretion.

G-23 Burden of Proof

In a civil action, the party making the claim must prove his or her case by a preponderance of the evidence. A party shall be considered to have met this burden of proof if the evidence, when considered as a whole, tends to prove that the party's claim is more likely to be true than not true.

G-24 Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign jurisdiction, including the State of New Mexico, will give notice in pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant source, including testimony, whether or not submitted by a party or admissible under these rules.

G-25 Subpoenas

(a) Issuance. Subpoenas requiring attendance of witnesses or production of documents or things shall be issued by the Court upon request of a party and served in accordance with Subpart F-2.

(b) Subpoena Unnecessary. A person present in Court without being subpoenaed may be required to testify as if he or she had been subpoenaed.

G-26 Jury Trials

(a) Costs. The party requesting a jury trial is responsible for all costs associated with the jury trial, including juror compensation; however, it may assess costs against a party or parties against whom judgment was rendered in accordance with Subpart J-5.

(b) When Allowed. All civil actions will be decided by the Court without a jury unless a party files a request for a jury trial at the time of the Petition or Answer. The party requesting a jury trial must submit an advance payment, as determined by the Court, by the date Jury Selection begins and all required fees and costs not less than forty-eight (48) hours before the scheduled date of trial. The Tribal Court may, upon good cause shown, waive advance payment of the required fees and costs.

(c) Issues that may be Tried. A party requesting a jury trial may specify the issues to be decided by the jury. Any other party may specify, not less than five (5) days before the date scheduled for trial, any other issues he or she wishes to be decided by the jury. Once a party requests that an issue be decided by a jury, the jury request may not be withdrawn without the consent of the other party or parties.

(d) Designation by Judge. The Court may, upon its own motion, order the trial by jury of any or all of the factual issues. The Court may, upon motion of any party or its own initiative, find that some or all of the issues designated for jury trial should not be tried by a jury, and order that no jury trial be held on those issues.

(e) Waiver of Right to Jury. The Court may hear and decide any issues without a jury if either party fails to appear at trial, regardless of any request made for a jury trial.

G-27 Jurors

(a) Choosing the Jury. Juries will be chosen in accordance with the Law and Order Code, Subpart F-6.

(b) Discharge of Juror. If, after the proceedings begin, a juror becomes unable or disqualified to perform his or her duty, an alternate juror will take the place of the discharged juror. If there is no alternate juror, the parties may agree to complete the action with the remaining jurors.

(c) Separation of the Jury. When the jurors are allowed to leave the courtroom during a trial, the Court will instruct them not to converse with or listen to anyone about the trial and will tell them not to form or express an opinion on the case until they begin deliberations.

(d) Deliberation. Once the case is submitted, the jury will deliberate in private.

(e) Things Taken by Jury. When deliberating, the jury may take with them: the Court's instructions; papers or things entered into evidence as exhibits; and any notes taken by the jurors themselves during trial.

(f) Additional Instructions. If the jury has a question after deliberation begins, the jury may request additional instructions in writing from the Court. Any interaction between the Court and the jury must be on the record, after notice to the parties.

(g) Declaration of the Verdict. When a majority of the jurors in a civil case agrees on a verdict, the jury shall inform the Court. The jury shall be taken into the courtroom; the verdict shall be given in writing to the Court and read aloud by the Court. The Court will ask the jury foreperson whether this is the verdict. Either party may have the jury polled to determine if such is, in fact, each juror's verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed.

(h) No Verdict. If the jury is discharged before rendering the verdict, or is for any reason prevented from giving a verdict, the action may be retried.

G-28 Special Verdicts

The Court may require the jury to return the verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

G-29 Instructions to the Jury

(a) Requests. At the close of the evidence, or at any earlier time as directed by the Court, any party may file written, requested instructions for the Court to give to the jury.

(b) Instructions. Outside the presence of the jury, the Court will inform the parties of the instructions it intends to give the jury. Parties will be given the opportunity to object to the instructions on the record and outside the hearing of the jury.

G-30 Directed Verdict; Judgment as a Matter of Law; Judgment Notwithstanding the Verdict

(a) Motion for a Directed Verdict or Judgment as a Matter of Law. If a party believes that the other party has not met the burden of proof at trial, a motion for directed verdict or judgment as a matter of law may be made any time before the case is submitted to the jury. The motion must specify the law and facts that entitle the party to the judgment.

(b) Motion for Judgment Notwithstanding the Verdict. After a verdict, the parties have fifteen (15) days to move for an entry of a judgment notwithstanding the verdict or for a new trial.

G-31 Findings by the Court

In cases tried without a jury, findings of fact and conclusions of law will be made by the Court in support of all final judgments. Within ten (10) days of the entry of judgment, on the Court's own motion or the motion of any party, the findings and judgment may be amended.

G-32 Disability or Disqualification of a Judge

(a) Disability. If a trial or hearing has begun and the judge is unable to proceed, any other judge may proceed with the case upon certifying familiarity with the record and determining that the proceedings in the case may continue without prejudice to the parties. The successor judge may recall any witness.

(b) Disqualification. Whenever a party alleges that the judge has a bias or prejudice, either against such party or in favor of any other party, the judge will determine in his or her discretion whether to proceed any further with the case. The allegation of bias must be filed as soon as practicable after the case has been assigned or the alleged bias or prejudice is known.

G-33 Judgment

(a) Definition. A judgment includes any final order and no special form is required. The Court in a civil action will announce a judgment either orally or in writing after completion of the trial or hearing. All judgments will be reduced to writing, which will include the basis for the decision.

(b) Judgment on Multiple Claims. An order or decision on some claims in a case will not end the action with respect to any other claims until all claims are finally decided. The appeal period will not start to run until all claims are finally decided, unless the Court makes a specific finding otherwise.

(c) Costs. The Court, at its discretion, may award costs as part of the final judgment.

(d) Attorney Fees. The Court may award attorney fees in a case if it reasonably appears that the case was pursued for purposes of harassment only, or that there was no reasonable expectation of success, or in the interests of justice.

In any action where the Pueblo and/or any of its officers or employees are sued for a cause of action arising out of, or in the course of, the performance of a tribal function or duty, or in any action—except by the Pueblo—against the bond of any such officer or employee, if judgment is rendered against the petitioner, the Court shall award a reasonable attorney fee against the losing petitioner and in favor of the Pueblo and/or its officers or employees.

(e) Entry of Judgment. A judgment is complete and will be deemed entered for all purposes when it is signed by the judge and filed with the Court.

G-34 Default

(a) Entry of Default. When a respondent has failed to respond to a Petition and failed to appear in Court after receiving notice, the Court may enter a default on motion of the petitioner. A judgment by default will not be different in kind from, or exceed in amount, that specifically requested in the original demand for judgment.

(b) Judgment by Default. Judgment by default may be entered:

1. If a party's claim is for a sum of money that can be made certain or there is other specific relief that the Court can grant;

2. If the opposing party has been personally served according to these rules; and

3. The Court has personal jurisdiction over the opposing party. Otherwise, judgment by default can be entered by the Court only upon receipt of whatever evidence the Court deems necessary to establish the claim.

No judgment by default shall be entered against the Pueblo.

(c) Setting Aside Default. The Court may, for good cause, set aside a default judgment.

G-35 Summary Judgment

Any time after the start of an action, but not to delay a trial, any party may move the Court for summary judgment on any or all of the issues. Summary judgment will be granted there is no genuine issue about any important fact and the party asking for summary judgment is entitled to it as a matter of law. Motions for summary judgment may be supported by affidavits, discovery, or memoranda, which must be made available to opposing parties at least two days prior to a summary judgment hearing.

G-36 New Trials; Amendments of Judgment

(a) Grounds; Time. Any party may move for a new trial on any or all of the issues, for any of the following reasons, by filing a motion within fifteen (15) days after the entry of the verdict or judgment:

1. An error or irregularity that prevented any party from receiving a fair trial;

2. Misconduct of the jury or jury members;

3. Newly discovered evidence that ordinary diligence could not have produced at trial;

4. Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice; or

5. Insufficient evidence to justify the judgment or the judgment it is contrary to law.

(b) Harmless Error. The Court will not grant a new trial on the basis of error or irregularity that was harmless, meaning the error did not affect substantial justice.

(c) Support for Motion. Parties may include memoranda or affidavits in support of their motions for a new trial and a responsive pleading will be allowed.

(d) Court Initiative. The Court may, on its own initiative, within fifteen (15) days after entry of judgment, order a new trial based on any permitted grounds and will specify the grounds for ordering a new trial.

(e) Motion To Alter or Amend Judgment. A motion to alter or amend a judgment shall be filed with the Court within fifteen (15) days after entry of the judgment.

G-37 Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record, and errors arising from oversight or omission may be corrected by the Court at any time on its own initiative or on the motion of any party and after such notice as the Court directs.

(b) Mistakes; Newly Discovered Evidence, etc. On motion, the Court may relieve a party from a final judgment or order for the following reasons:

1. Mistake, surprise, or excusable neglect;

2. Newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Section G-36;

3. Fraud, misrepresentation, or other misconduct of the other party;

4. When the Summons in an action has not been served upon the respondent in accordance with Section G-11 and a default judgment was entered;

5. The judgment is void;

6. The judgment was satisfied or discharged or it is no longer equitable that the judgment should apply; or

7. Any other reason justifying relief from the judgment.

(c) The motion for relief from judgment must be filed with the Court within a reasonable time after the judgment became final. The Court has the discretion to determine whether it was filed within a reasonable time. A motion under this rule does not affect the finality of a judgment or suspend its operation.

G-38 Harmless Error

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

G-39 Execution

(a) Types of Execution. Court orders allowing execution of a judgment shall consist of two types:

1. Attachment is used to seize property in possession of a judgment debtor.

2. Garnishment is used to seize property or wages in the possession of a person other than the judgment debtor.

(b) Service. Orders of attachment or garnishment shall be served in the same manner as the Summons and Petition, and proof of service shall be filed with the Court.

(c) Requests to Garnish. All requests for garnishment, other than for child support, may be granted at the Court's discretion.

(d) No Self-Help. Subpart J-10 of the Code discourages self-help repossessions.

G-40 Stay of Proceedings to Enforce a Judgment

(a) Stay upon Entry of Judgment. Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court in its discretion and on such conditions for the security of the adverse party as are proper otherwise directs.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment or of a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings.

G-41 Injunction/Restraining Order

(a) Temporary Restraining Order (Injunction). A temporary restraining order may be granted without notice to the other party only if it clearly appears from specific facts shown by affidavit or by verified Petition that immediate and irreparable injury, loss, or damage will result to the petitioner before the respondent can be heard.

(b) Duration of Temporary Restraining Order. Every temporary restraining order granted without notice shall be filed immediately with the Court and shall expire by its own terms within such time after entry, not to exceed ten (10) days unless the order is extended for good cause or the other party agrees to extend it. In case a temporary restraining order is granted without notice, a hearing with all parties present will be held as soon as possible. On notice to the party who obtained the temporary restraining order, the other party may appear and move for its dissolution.

(c) Security. The Court may require an applicant for an injunction to provide security, in such sum as the Court deems proper, for the payment of such costs and damages as may be sustained by a party who is found to have been wrongfully enjoined.

(d) Hearing Temporary Restraining Order. Within ten (10) days, the Court will hold a hearing where both sides will be given an opportunity to be heard on whether to issue a longer-term or permanent restraining order (injunction).

(e) Form and Scope of Restraining Order/Injunction; Service. Every order granting an injunction and every restraining order (1) will state the reasons why it was issued; (2) will be specific; (3) will describe in reasonable detail the acts to be restrained or required; and (4) is binding only upon the parties to the action, including their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with the parties, so long as the parties receive actual notice of the order by personal service or otherwise.

G-42 Appeal

All appeals from the Tribal Court shall be heard by the Tribal Council in accordance with the provisions of the Law and Order Code concerning appeals.

Subpart H Rules of Criminal Procedure

H-1 Complaints

(a) All criminal prosecutions for violation of the Law and Order Code shall be initiated by complaint. A complaint is a written statement sworn to by the complaining witness and charging that a named individual(s) has committed a particular criminal offense.

(b) Complaints shall contain:

1. The signature of the complaining witness sworn to before a Judge or an individual designated by the Judges;

2. A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as early as may be ascertained;

3. The name or description of the person alleged to have committed the offense; and

4. The section of the Law and Order Code allegedly violated.

(c) The Tribal Court Judge may designate an individual who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Complaints shall then be submitted without unnecessary delay to a Judge to determine whether a warrant or summons should be issued.

(d) If the complaint or the complaint together with other sworn statements is sufficient to establish probable cause to believe that a crime has been committed by the person charged and the Tribal Court has jurisdiction over that person: the Tribal Court shall issue a warrant pursuant to Subpart H-24 of this Code instructing the police to arrest the named accused; or in lieu thereof, the Tribal Court shall issue a summons commanding the accused to appear before the court at a specified time and place to answer to the charge.

(e) When an accused has been arrested without a warrant, a complaint shall be filed with the Tribal Court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

(f) All criminal prosecutions for violation of the Law and Order Code shall be initiated by complaint. A complaint is a written statement sworn to by the complaining witness and charging that a named individual(s) has committed a particular criminal offense.

(g) Complaints shall contain:

1. The signature of the complaining witness sworn to before a Judge or an individual designated by the Judges;

2. A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as early as may be ascertained;

3. The name or description of the person alleged to have committed the offense; and

4. The section of the Law and Order Code allegedly violated.

(h) The Tribal Court Judge may designate an individual who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Complaints shall then be submitted without unnecessary delay to a Judge to determine whether a warrant or summons should be issued.

(i) If the complaint or the complaint together with other sworn statements is sufficient to establish probable cause to believe that a crime has been committed by the person charged and the Tribal Court has jurisdiction over that person: the Tribal Court shall issue a warrant pursuant to Subpart H-24 of this Code instructing the police to arrest the named accused; or in lieu thereof, the Tribal Court shall issue a summons commanding the accused to appear before the court at a specified time and place to answer to the charge.

(j) When an accused has been arrested without a warrant, a complaint shall be filed with the Tribal Court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

H-2 Arrests

(a) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(b) No police officer shall arrest any person for a criminal offense set out in the Law and Order Code except when:

1. The officer shall have a warrant signed by a Judge of the Pueblo of Pojoaque Tribal Court commanding the arrest of such person of the officer knows for a certainty that such a warrant has been issued; or

2. The offense shall occur in the presence of the arresting officer; or

3. The officer shall have probable cause to believe that an offense has been committed and that the person to be arrested has committed the offense.

H-3 RESERVED

H-4 RESERVED

H-5 Arrest Warrants

Repealed on October 16, 2008.

H-6 Notification of Rights at the Time of Arrest

Repealed on October 16, 2008.

H-7 Summons in Lieu of a Warrant

Repealed on October 16, 2008.

H-8 Hot Pursuit

Repealed on October 16, 2008.

H-9 Search Warrant – Defined

Repealed on October 16, 2008.

H-10 Issuance of Search Warrant

Repealed on October 16, 2008.

H-11 Execution and Return of Search Warrant

Repealed on October 16, 2008.

H-12 Search Without a Warrant

Repealed on October 16, 2008.

H-13 Contraband, Confiscated and Abandoned Property

Repealed on October 16, 2008.

H-14 Arraignment

(a) Arraignment is the bringing of an accused before the Tribal Court, informing him of his rights and of the charge against him, receiving his plea and setting bail as appropriate in acceptance with Subpart H-17 of this code.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall the arraignment be later than the next regularly scheduled session of the Tribal Court.

H-15 Rights of Accused at Arraignment

Before an accused is required to respond to any criminal charge the Judge shall:

(a) Read to the accused and determine that he understands the complaint and the section of the Law and Order Code which he is charged with violating, including the maximum authorized penalty; and

(b) Advise the accused that he has the right to remain silent; that his silence will not be held against him; that anything he says may be used against him in a Court of Law; to be tried by a jury; and to be represented by counsel at his own expense and that the arraignment will be postponed should he desire to consult with counsel.

H-16 Receipt of Plea at Arraignment

(a) If the accused pleads "not guilty" to the charge, the Judge shall then inform him of a trial date and set conditions for bail prior to trial.

(b) If the accused pleads "guilty" to the charge, the Judge shall determine that the plea is made voluntarily and that the accused understands the consequence of the plea, including the rights which he is waiving by the plea. The Judge may then impose a sentence or defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition

of a just sentence. The accused shall be afforded an opportunity to inform the Tribal Court of facts in mitigation of the sentence.

H-17 Bail – Release Prior to Trial

Every person charged with a criminal offense before the Tribal Court shall be entitled to be released from custody pending trial under whichever one or more of the following conditions are deemed necessary to reasonably assure the appearance of the person at any time lawfully required.

(a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.

(b) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.

(c) Release with reasonable restrictions on the travel, association or place of residence of the accused during the period of release.

(d) Release after deposit by the accused or a bondman's bond in either cash or other sufficient collateral in an amount specified by the Judge or a bail schedule. The Judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to come due if the accused fails to appear as ordered.

(e) Release after execution of a bail agreement by two responsible members of the community.

(f) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

H-18 Bail – Release by Police Officer

Any Police Officer authorized to so by the Tribal Court may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. Police Officers shall have available a bail schedule prepared by the Tribal Court which shall be used for setting money bond where such condition of release is deemed necessary. Any Police Officer who refuses to release an accused on bail or who specifies a bail condition which the accused is unable to satisfy shall bring such accused before a Tribal Judge for review of the release conditions at the first available opportunity and without unnecessary delay.

H-19 Bail – Release Pending Appeal

Every person who has been convicted of an offense and who has filed an appeal or a petition for writ of habeas corpus shall be treated in accordance with the provisions of Subpart H-17, unless the Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a danger to

the community, to the accused, or to any other person. If the Judge finds such to be the case, he may order detention of the accused.

H-20 Withdrawal of Guilty Plea

The Tribal Court may, in its discretion, allow a defendant to withdraw a plea of guilty, whenever it appears that the interests of justice and fairness would be served by doing so.

H-21 Commitments

(a) No person shall be detained, jailed or imprisoned for more than thirty-six (36) hours pursuant to an arrest unless there be issued an express or conditional commitment order signed by a duly qualified Judge of the Court. Any person arrested on a Friday, Saturday, or a day before a legal holiday who does not provide bail may be held in custody pending arraignment until noon of the next regular business day of the Tribal Court.

(b) There shall be issued for each person held for trial a temporary commitment order, and for each person held after sentencing a final commitment order signed by a duly qualified Judge of the Tribal Court.

H-22 Taking Minor Children into Custody

(a) A child may be taken into custody:

1. Pursuant to an order of the Court in a juvenile proceeding;

2. For an act of delinquency pursuant to the laws of arrest;

3. By a police officer when he has reasonable grounds to believe that the child is suffering from illness or that the child's surroundings are such as to endanger his health, morals and welfare and that his removal is necessary;

4. By a police officer when he or she has reasonable grounds to believe that the child is a runaway from his parents, guardian or other custodian.

(b) Upon taking a juvenile into custody, the arresting officer must immediately advise the juvenile of his rights pursuant to Subpart H-24(a)(1)(B), and notify the juvenile's parents, guardian or other custodian.

(c) Unless a juvenile who is taken into custody is prosecuted as an adult, he or she may not be fingerprinted or photographed without the written consent of the Tribal Judge, and neither his name nor picture shall be made public by any medium of public information in connection with the juvenile proceedings.

(d) In all cases if the parents, guardian or custodian of a child taken into custody without a court order can be located and are willing and able to take the child under their care, the child shall be surrendered to their care pending any juvenile proceedings or other court orders.

H-23 Cooperation by Federal Employee

(a) No employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the Pueblo Courts or influence such functions in any manner except as permitted by the BIA regulations or in response to a request for advice or information from the Court.

(b) Employees of the Bureau of Indian Affairs, particularly those engaged in social, health or education services, shall assist the Courts upon their request in the preparation and presentation of the facts in a case and in the proper treatment of individual offenders.

H-24 Searches, Seizures and Forfeitures

Searches, seizures and forfeitures are reasonable when tribal sovereignty, customs, and traditions are honored, due process is accorded, the spirit of congressional acts are followed, the Pueblo of Pojoaque is not used as a safe haven for crime or criminals, and federal judicial decisions interpreting search and seizure in Indian country are considered.

(a) Warrants.

1. Arrest warrants: Arrest warrants authorize the arrest of a specific person wherever that person can be found.

A. Procedure for issuing an arrest warrant.

i. The Tribal Judge shall have the authority to issue an arrest warrant whenever the Tribal Court is presented with a written and sworn statement by the Pueblo of Pojoaque Tribal Police that there is probable cause that a crime has been committed by an Indian within the jurisdiction of the Pueblo of Pojoaque and that the crime is included within the Pueblo of Pojoaque Law and Order Code.

ii. Arrest warrants shall be in writing and signed by the Tribal Judge.

B. Notification of rights at the time of arrest. Upon arrest, the accused shall be advised that he may remain silent and not answer any questions, that any statements made by him may be used against him in Court, that he has the right to obtain counsel at his own expense, and that he has the right to cease questioning at any time.

C. Summons in lieu of an arrest warrant.

i. The Tribal Judge may deem that an arrest is not required. In lieu of a warrant, the Tribal Judge may issue a summons commanding the accused to appear before the Tribal Court at a stated time and place for an arraignment.

ii. The summons shall contain the same information as the arrest warrant.

iii. If an accused fails to appear after receiving a summons, an arrest warrant shall be issued by a Tribal Judge.

2. Arrest without a warrant.

A. Tribal Police may arrest an Indian when they have probable cause that a crime has been committed by such individual.

B. Tribal Police may continue the hot pursuit and arrest an Indian beyond the exterior boundaries of the Pueblo whenever they have probable cause to believe that the Indian has committed a crime within the exterior boundaries of the Pueblo and is attempting to escape arrest.

3. Search warrants: A search warrant authorizes a search of a specific place for specific items.

A. Procedure for obtaining a search warrant.

i. Absent conditions contained below, in Paragraphs (4) and (5) of this Section, the Tribal Police Department shall request a search warrant for the search of any premises and seizure of property of any person within the Tribal Court's jurisdiction.

ii. A Tribal Judge shall have the authority to issue a warrant for the search of a premises and seizure of property as long as the request contains probable cause that the search will discover stolen, embezzled or contraband property criminally possessed or property that has been used, or will be used, to commit a crime.

iii. Contraband is defined as any property which is unlawful to produce or possess.

iv. Probable cause is supported by a duly signed, written and sworn statement based on reliable information by a duly authorized tribal law enforcement officer of the Pueblo.

v. The search warrant shall be in writing, signed by a Tribal Judge and describe in detail, the property or place to be searched and the property to be seized.

B. Execution and return of a search warrant. Search warrants shall only be executed by Tribal Police officers. A copy of the warrant and receipt for property seized shall be given to the person whose property was seized. The executing officer shall return the warrant, and an inventory of the property seized, to the Tribal Court no later than twenty-four (24) hours after the property was seized.

4. Search without a warrant.

A. A Tribal Police officer may conduct any search without a warrant when the search is made:

i. Incident to a lawful arrest;

ii. With the consent of the person being searched;

iii. Whenever there is probable cause to believe the person may be armed or dangerous;

iv. When the search is of a moving vehicle and there is probable cause to believe that it contains contraband, stolen or embezzled property or instruments used in a crime; or

v. When there is a probability that evidence of a crime may be disposed of before the issuance of a written search warrant.

5. Arrest or search without a warrant by the Tribal Police upon command of the Governor, Lieutenant Governor or Tribal Judge.

A. Under the traditional authority of the Tribal government, the Governor or, in his absence, the Lieutenant Governor, may orally, or in writing, command the Tribal Police to effect an arrest or search and seizure whenever there is written or oral evidence presented by the Tribal Police that a crime has been committed, an individual from another jurisdiction is using the Pueblo as a safe haven to escape law enforcement authorities, or there is an impending threat to the health, safety and welfare of the Pueblo, its members or its visitors. A Tribal Judge also has the authority to orally command the Tribal Police to effect an arrest or search and seizure when the conditions noted above are present.

B. It is the preferred option of the Pueblo of Pojoaque to use the traditional authority or oral approvals only when the circumstances surrounding the issuance of written arrest warrants or written search and seizure warrants may allow evidence of a crime to be destroyed, an individual to evade law enforcement authorities, a crime to be committed, or there is an impending threat to the health, safety and welfare of the Pueblo, its members or its visitors.

6. Arrests, searches and seizures conducted by outside law enforcement agencies.

A. The Pueblo of Pojoaque recognizes the authority, established by the U.S. Supreme Court, of an outside law enforcement agency to conduct an arrest or search and seizure within Indian country under limited conditions.

B. However, the Pueblo of Pojoaque also recognizes that arrests or searches, by any law enforcement agency, may lead to breaches of the peace and unsafe conditions for the law enforcement agency officers involved and the public at large.

C. In order to preserve the peace, protect law enforcement officers, and to ensure that the Pueblo of Pojoaque is not a safe haven for suspected criminals, the Pueblo of Pojoaque will continue to work closely with state and federal law authorities to ensure effective law enforcement protocol.

D. Currently, the Pueblo of Pojoaque enjoys close communications and relations with outside law enforcement agencies. These communications and relations enable effective law enforcement protocol.

E. In the event that an outside law enforcement agent attempts to present an arrest or search warrant to an Indian within the exterior boundaries of the Pueblo of Pojoaque or to a tribally-owned business, the law enforcement agent should be asked to speak directly with the Pueblo of Pojoaque Tribal Police.

F. In order to ensure that arrest and search warrants are legally served within the Pueblo of Pojoaque, the Pueblo of Pojoaque Tribal Police shall be immediately contacted whenever any outside law enforcement agent attempts to serve an arrest or search warrant without a Tribal Police Officer present.

G. The Tribal Police phone number is 505.455.2295.

H. The Tribal Police shall immediately attempt to contact the serving law enforcement agent and all relevant Tribal authorities to ensure that effective law enforcement protocol is followed.

7. Welfare checks.

A. Under the traditional authority of the Governor, or in his absence the Lieutenant Governor, he may orally command the Tribal Police or Social Services Department to conduct a welfare check of a Tribal Member or person living within the Pueblo of Pojoaque-owned land within the exterior boundaries or a person living within land place in federal trust for the Pueblo of Pojoaque.

B. A Tribal Judge also has the authority to orally command the Tribal Police to conduct a welfare check of a Tribal Member or person living within the Pueblo of Pojoaque-owned land within the exterior boundaries or a person living within land placed in federal trust for the Pueblo of Pojoaque.

C. A welfare check is defined as a physical visit to a person, or their home, to determine whether the person's health, safety or welfare is in danger.

D. In no circumstances is a welfare check to be conducted as a pretext for a search and seizure.

E. Whenever a welfare check is conducted, the Tribal Police or Social Services Department shall, in writing, notify the Governor or Tribal Court of their findings.

(b) Forfeiture of contraband, confiscated property, abandoned property, property used in commission of a crime, property acquired from proceeds of illegal activity or property presenting a danger to the public health, safety and welfare.

1. The Tribal Police may make a written request to the Tribal Court for the forfeiture of property.

A. Property subject to forfeiture includes contraband, confiscated property, abandoned property, property used in commission of a crime, property acquired from the proceeds of an illegal activity or property presenting a danger to the public health, safety and welfare.

B. Requests for forfeiture may be made any time after the property is in the possession of the Tribal Police.

C. The request shall include the name and address of any party with a known interest in the property. The written petition shall include any Court's case number under which the property was seized and a detailed list of the property requested to be forfeited.

D. The Tribal Court shall conduct a hearing regarding the disposition of the property.

2. The owner of property that is in the possession of the Tribal Police may make a written request to the Court for the return of the property.

A. The written request shall list when the Tribal Police came into possession of the property and a detailed description of the property.

B. The Tribal Court shall conduct a hearing regarding the disposition of the property.

3. The Tribal Court hearing for disposition of property.

A. Prior to the scheduled Tribal Court hearing, the Court shall send a Notice of Hearing to all persons with a known interest in the property.

B. During the Tribal Court hearing all persons shall be accorded due process before the Tribal Court determines the status of the property.

C. If the property was not property used in commission of a crime, property acquired from proceeds of an illegal activity or property presenting a danger to the public health, safety and welfare and the claimant proves by a preponderance of evidence that they

are the lawful owner, the property shall be returned as soon as the property is no longer needed as evidence in a pending legal proceeding.

D. All other property shall be destroyed, forfeited to the Pueblo of Pojoaque, or sold at public auction and the proceeds delivered to the Pueblo of Pojoaque.

Subpart I Sentencing

I-1 Nature of Sentences

Except as otherwise provided hereunder, a person found guilty of violating a provision of the Criminal Code, Subpart M, may be sentenced to the penalty provided in such offense. Sentences shall be imposed without unreasonable delay and shall not exceed the maximum penalties provided by law. The penalties provided for the offense are maximum penalties and should be imposed only in extreme cases.

I-2 Sentences of Imprisonment

(a) A person sentenced to imprisonment may work for the benefit of the Pueblo. Any work performed shall reduce the sentence at the rate of two (2) days of incarceration for each day of work performed. "Days of work" shall mean at least four (4) hours of work performed and shall be under the supervision of any person authorized by the Court.

(b) Any sentence of imprisonment shall be reduced by any time spent in jail before judgment was entered.

I-3 Payment of Fines

(a) Any person sentenced to pay a fine shall pay such fine to the Court Clerk who shall issue a receipt therefore.

(b) If the full amount of the fine cannot immediately be paid, the Court may provide for the payment of such fine in installments.

I-4 Failure or Inability to Pay Fines

(a) A sentence of imprisonment shall not be imposed upon any indigent person in the form of an alternative to a fine, i.e., "dollars a day."

(b) Any person sentenced to pay a fine shall not be imprisoned to work off such fine if, by reason of indigence, he is unable to pay the fine imposed.

(c) Any person who is presently able to pay a fine or an installment of a fine and who willfully refuses to do so, may be ordered to imprisonment for, or allowed to work off the unpaid amount of the fine at the rate of five dollars ($5.00) per day for each day of jail or ten dollars ($10.00) for each day of work performed.

I-5 Commutation of Sentence

The Judge of the sentencing Court may at any time that one-half or more of an original sentence of imprisonment has been served, commute such sentence to a lesser period upon proof that the person sentenced served without misconduct.

I-6 Suspension of Sentence: Probation

(a) The Judge of the sentencing Court may suspend any sentence upon condition that the defendant comply with such reasonable terms and conditions as the Court deems necessary.

(b) When considering suspending any sentence, the Court shall consider the prior record of the defendant, his background, character, financial condition, family and work obligations, the circumstances of the offense and attempts at restitution.

I-7 Violation of Suspended Sentence

(a) Any person accused of violating the terms or conditions of his suspended sentence shall be afforded a hearing before the sentencing Court to determine the truth of the accusations.

(b) Where, by a preponderance of testimony, a person is found to have violated the terms or conditions of his suspended sentence, such person may be ordered to serve his original sentence or any portion thereof.

I-8 Disposition of Fines

(a) All monetary fines imposed for the commission of an offense shall be in the nature of an assessment of the payment of designated Court expenses. Such expenses may include the payment of fees to jurors, witnesses answering subpoenas, etc.

(b) All fines assessed and collected shall be paid to the Pueblo of Pojoaque bonded treasurer or his or her disbursing agent to be deposited in a special account labeled "Special Deposit, Court Funds." The disbursing agent shall withdraw such funds in accordance with existing Pueblo regulations upon the order of the Court Clerk signed by a Judge for payment of specific fees to the jurors and witnesses. The disbursing agent and the Court Clerk shall keep an accounting of all such deposits and withdrawals for the inspection of any interested person.

(c) Whenever such funds shall exceed the amount necessary for the payment of Court expenses herein before mentioned, the Governor of the Pueblo shall designate further expenses of the Court which shall be paid by these funds.

I-9 Civil Remedies not Precluded

The imposition or suspension of any penalty on condition of restitution to one whose person or property has been injured, for the commission of any offense under this Code shall not preclude any civil remedy for such injuries.

I-10 Community Service for Pueblo of Pojoaque Tribal Members

Tribal Members who are required to perform community service may serve either in maintenance or operation of the Wellness Center at the discretion of the Manager.

I-11 Cost of Incarceration Fines for Criminal Offenses

The fines for criminal offenses shall reflect the costs of incarceration and should be included as part of the punishment for a criminal offense. In all criminal convictions, the Tribal Court shall assess the entire amount of incarceration fees. The Tribal Judge shall use their discretion in approving a payment plan for the incarceration fees.

I-12 Payroll Policy for Incarcerated Pueblo of Pojoaque Tribal Members

(a) As soon as a Tribal Member is convicted of a crime in Tribal Court, or any other court of lawful jurisdiction, all payroll benefits shall cease for as long as they are incarcerated.

(b) If a Tribal Member is convicted of a crime in the Tribal Court, and the Tribal Member is then incarcerated, the Tribal Court shall send a copy of the Tribal Court Order to the Lieutenant Governor's office for further disposition.

I-13 Weatherization Funds to Pay Debts Owed to the Tribal Government/Tribal Court

(a) An enrolled Member's outstanding debts to the Tribal government or the Tribal Court must be paid prior to the issuance of a weatherization check. If the outstanding debt is not paid, the amount of the outstanding debt shall be withheld from the Member's weatherization check and applied to the outstanding debt.

(b) A Tribal Official or the Tribal Judge shall notify the accounting department prior to the issuance of the weatherization checks of any amounts to be withheld from the weatherization check and that the amount shall be applied to the outstanding debt.

(c) Unless forgiven as described in Subpart L-24 (Forgiveness of Foster Care Debt), the cost of foster care of an enrolled Member's child shall be considered an outstanding debt.

I-14 Weatherization Checks for Incarcerated Felons

(a) Weatherization checks may be granted for the purposes of weatherizing homes. Any weatherization check granted to an enrolled Member who is a felon incarcerated in a State or

Federal facility shall be placed in the enrolled Member's permanent trust fund account. The permanent trust fund may be accessed after the enrolled Member's release from incarceration.

(b) The Tribal Member, upon release from incarceration, shall report to the Tribal Court for the disposition of funds and the Tribal Court shall determine the amounts to be paid for Tribal restitution and for all other purposes.

I-15 Sex Offender Notification Registration

(a) The Pueblo of Pojoaque delegates to the State of New Mexico all sex offender registration and notification functions.
(b) The Tribal Court shall notify any sex offender convicted in the Pueblo of Pojoaque Tribal Court that they shall immediately report to the appropriate State of New Mexico or Federal agency for sex offender registration and notification.

(c) The Tribal Court shall forward a copy of the Tribal Court Order in all sex offender conviction cases to the appropriate State of New Mexico or Federal agency for sex offender registration and notification.

I-16 Installment Payments of Tribal Disbursements for Justice-Involved Tribal Members

(a) From the time to time throughout the year, the Pueblo may disburse funds to tribal members, including such payments as winter weatherization, Spring Disbursement, or Summer Disbursement.
(b) Any tribal disbursement provided to an enrolled member who is incarcerated, on probation, or on parole in any jurisdiction may be disbursed in monthly installments, rather than a lumpsum at the time of disbursement.

(c) Before each disbursement, the Tribal Treasurer will request from Tribal Court a list of Members who are known to be incarcerated, on probation, or on parole in any jurisdiction.

(d) A Tribal Court judge will review the status of each Member who is known to be incarcerated, on probation, or on parole in any jurisdiction, including probation and parole orders (if available) and any other information provided to the Tribal Court, and based thereon, and in accordance with the customs and traditions of the Pueblo, will make a determination as to whether each such person's disbursement shall be made in monthly installments rather than a lump sum.

(e) The Tribal Court will send the list to the Tribal Treasurer, along with orders regarding each of the Members who the Tribal Court has determined shall receive monthly disbursements rather than a lump sum. Copies of all such orders will be provided to Tribal Leadership. The Tribal Treasurer shall provide copies of the orders to the Assistant Controller. Any Member who is the subject of such an order will be provided a copy of the order pertaining to that Member only.

(f) A member whose distribution is distributed on a monthly basis pursuant to this Subpart may petition the Court to amend the payment schedule or to direct payment of that Member's fund to creditors or vendors.

Subpart J Civil Actions

J-1 Judgments – Notice

No judgments shall be entered in any suit unless the respondent has received actual notice of such suit or notice was served according to the service rules in Section G-11 and he has a reasonable opportunity to appear in Tribal Court and defend himself. Evidence of receipt of notice shall be kept as a part of the record in the case. In all civil suits, the petitioner may be required to deposit with the Court Clerk a fee or other security in a reasonable amount to cover costs and disbursements in the case.

J-2 Law Applicable in Civil Suits

(a) In all civil suits, the Court shall apply tribal law including any applicable ordinances, acts, regulations, policies, resolutions, Tribal Court decisions, customs, traditions and usages of the Pueblo of Pojoaque.

(b) Where doubt arises as to customs and usages of the Pueblo of Pojoaque, the Tribal Court may request and rely upon the advice of counselors familiar with such customs and usages.

(c) In any matters that are not covered by tribal law or by applicable federal laws and regulations, the Tribal Court may look to the laws of the State of New Mexico for guidance.

J-3 Tribal Waivers of Sovereign Immunity

(a) The Tribal Council only authorizes waivers of sovereign immunity that are approved by a specific Tribal Council resolution and are in writing.

(b) All waivers of sovereign immunity shall explain the scope of the waiver. Scope of the waiver may include the duration of the waiver, the jurisdiction covered in the waiver, the terms of the contract, the limits on damages, or the amount of the contract.

(c) The Tribal Council may authorize any Tribally-chartered or Federally-chartered corporation to waive the corporation's sovereign immunity. The authorization shall be contained in the corporation's articles of incorporation. However, the corporation's waiver of sovereign immunity is limited to the corporation. The waiver of a corporation's sovereign immunity is not a waiver of the Pueblo of Pojoaque's sovereign immunity.

J-4 Judgments in Civil Actions

(a) In all civil cases, judgments shall consist of an order of the Tribal Court awarding money damages to be paid to the injured party or the performance of some other act for the benefit of the injured party.

(b) Where the injury inflicted was the result of carelessness of the respondent, the judgment shall fairly compensate the injured party for the loss suffered.
(c) Where the injury was deliberately inflicted, the judgment may impose any additional penalty upon the respondent.

(d) Where the injury was inflicted as a result of an accident and where both the petitioner and respondent were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he suffered.

J-5 Costs in Civil Actions

The Tribal Court may assess the accruing cost of the case against a party or parties against whom judgment was rendered. Such cost shall consist of the expenses of voluntary witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial was held and further expenses connected with the proceeding before the Tribal Court as the Court may direct.

J-6 Payment of Judgments

A judgment shall be considered a lawful debt in all proceedings to distribute an Indian decedent's estate.

J-7 Full Faith and Credit to Foreign Judgments

(a) Purpose. The enforcement of foreign judgments in Tribal Court is not compulsory. This section establishes the procedure for recognizing and enforcing foreign judgments and clarifies that payroll-related withholding orders must be reviewed and approved for enforcement by the Tribal Court prior to processing under Pueblo law**.**

(b) Definitions. For the purposes of this section:

1. "Issuing Court" means a court of another jurisdiction that issued the foreign judgment for which full faith and credit is being sought.

2. "Foreign Judgment" means any judgment, order, or decree of a court of another Pueblo, tribe, state, or jurisdiction, as well as any other administrative order or notice to withhold income associated therewith.

3. "Proponent" means any person that wishes to enforce a foreign judgment.

(c) Full Faith and Credit. The Tribal Court may give full faith and credit to authentic and properly registered foreign judgments, provided that the issuing court has not declined reciprocal full faith and credit to the judgments of the Pueblo of Pojoaque Courts.

(d) Payroll-Related Withholding Orders. Any garnishment, levy, or other legally mandated withholding issued by a court of competent jurisdiction and directed at employee payroll, including but not limited to court ordered garnishments, federal or state tax levies, child support orders, spousal support orders, and any other lawful payroll withholding expressly authorized by federal, state, or Pueblo law, must be submitted to the Tribal Court and must be reviewed and approved for enforcement prior to any processing or enforcement by the Pueblo of Pojoaque Human Resources Department in accordance with Pueblo law.

(e) Registration of All Other Foreign Judgements. Any person that wishes to enforce a foreign judgment must register the judgment with the Tribal Court. The procedure for proper registration is as follows:

1. The proponent must file a certified copy of the foreign judgment with the Tribal Court, along with a motion requesting recognition and enforcement, and payment of any required filing fees (unless waived).

2. The Tribal Court will serve notice of the order upon parties subject to the judgment, consistent with the Pueblo of Pojoaque Rules of Civil Procedure.

3. Parties have ten (10) days to raise only procedural due process objections to enforcement of the judgment. Procedural due process objections are limited to claims that the foreign court failed to provide proper notice, an opportunity to be heard, an impartial tribunal, jurisdiction, or other fundamental procedural fairness required by law. If no objections are made, the Tribal Court will honor and enforce the foreign judgment to the extent permitted under Pueblo law.

(f) Partial Enforcement. Where a foreign judgment is invalid by reason of a lack of jurisdiction of the issuing court, the Tribal Court may adopt some or all of its provisions as an original order of the Court after determining that the parties subject to the judgment were given sufficient notice and opportunity to present evidence and that the provisions adopted do not contravene Pueblo of Pojoaque law or policy.

J-8 Appeal – Timing & Filing Fees

In all civil cases, any party aggrieved by a judgment may appeal from a decision of the rendering court to the Court of Appeals upon giving notice of such appeal at the time of judgment or within ten (10) days thereafter along with the filing fee and upon giving proper assurance to the Tribal Judge through the posting of a bond or assurance that he or she will satisfy the judgment if it is affirmed. In any case where a party has perfected his or her right to

appeal as established herein, the judgment of the Tribal Court shall not be executed until after final disposition of the case by the Court of Appeals.

J-9 Processing Foreign Court Orders Regarding Garnishment and Levies

Any garnishment, levy, or other legally mandated withholding issued for a Pueblo employee's payroll by a court of competent jurisdiction in any state or by any federal or tribal agency acting under its statutory authority, including but not limited to court ordered garnishments, federal or state tax levies, child support orders, spousal support orders, and any other lawful payroll withholding directive, must be forwarded immediately and directly to the Tribal Court. All such garnishments, levies, or withholding directives must be reviewed and approved for enforcement by the Judge. If the Judge is not available, a court staff member who has been previously trained by the Judge may approve for enforcement.

Human Resources is solely responsible for processing and enforcing all payroll related garnishments and levies that have been reviewed and approved for enforcement by the Tribal Court in accordance with applicable Pueblo, federal, and state law.

Garnishments and levies apply only to employee payroll. No other Pueblo payments, including but not limited to, distributions, stipends, honoraria, benefits, and program payments may be withheld, reduced, or redirected to satisfy any garnishment, levy, or withholding order.

This section does not apply to repossession related to secured transactions involving Pueblo Member employees.

J-10 Repossessions

The Tribal Court shall have jurisdiction over all repossession requests. The Tribal Court should bear in mind that the traditional policy has been never to honor "self-help" repossessions.

J-11 Unlawful Use of Identification Cards and Documents

(a) It is an unlawful use of an identification card or document within the exterior boundaries of the Pueblo of Pojoaque to:

1. Display or cause to display or have in their possession any identification card that contains a false or fictitious name or date of birth;

2. Display or represent as one's own any identification card belonging to another person; or

3. Display an altered, forged or fictitious identification card.

(b) Any employee or agent of a wholly-owned Pueblo of Pojoaque business establishment may question any person in their business establishment as to whether they are the person identified on the card or document. No employee or agent of a wholly-owned Pueblo of Pojoaque business establishment is criminally or civilly liable:

1. On account of such questioning; or

2. For immediately reporting to the law enforcement authorities the person suspected of violating this Section of the Law and Order Code.

(c) Any employee or agent of a wholly-owned Pueblo of Pojoaque business establishment who suspects that an identification card is being unlawfully used may take, or copy the information on, that identification card or document until the law enforcement authorities arrive. Such a taking does not render the employee or agent criminally or civilly liable.

(d) Any law enforcement officer may file in Tribal Court a civil petition on any person suspected of violating this Section of the Tribal Law and Order Code.

(e) Penalties. Any person found in violation of this Section may be subject to a minimum fine of three hundred dollars ($300) up to a maximum fine of five thousand dollars ($5,000) by the Tribal Judge.

(f) Destruction of Evidence. Evidence used to violate this Section shall be retained by the Tribal Police. The Tribal Police shall periodically destroy such evidence, per Tribal Court order.

J-12 Civil Liability for Conversion

(a) Conversion of money, assets or property of the Pueblo, or its corporations, is a civil offense.

(b) Conversion is defined as the unauthorized intentional taking or transfer of the Pueblo of Pojoaque's, or its corporations', money, assets or property.

(c) Any person found to have converted the money, assets or property of the Pueblo or its corporations may be civilly liable to the Pueblo or its corporations. The damages may include punitive damages of no more than four (4) times the amount of money or value of goods converted, costs of the lawsuit, reasonable attorney's fees, and is required to appear in Tribal Court.

(d) Any person who has been found to have converted the property of the Pueblo of Pojoaque or its corporations is a danger to the Pueblo. The person may be excluded from the Pueblo of Pojoaque's exterior boundaries for an amount of time to be determined by the Tribal Court.

J-13 Harassment Ordinance

(a) Harassment consists of intending to annoy, seriously alarm or terrorize another person when it serves no lawful purpose. The harassment must be such that it would cause a reasonable person to suffer substantial emotional distress.

(b) The allegation of harassment must be on file with the Tribal Police.

(c) Any harassment violation will be subject to a civil petition issued by the Tribal Police.

(d) Any harassment violation will subject to the exclusive jurisdiction of the Tribal Court.

(e) Any person found violating the Harassment Ordinance is subject to a minimum fine of three hundred dollars ($300) up to a maximum fine of five thousand dollars ($5,000), and is required to appear in Tribal Court.

J-14 Firearms Registration

(a) All firearms within the Pueblo of Pojoaque shall be registered with the Pueblo of Pojoaque Tribal Police using the Pueblo of Pojoaque Firearms Registration Form.

(b) Anyone possessing an unregistered firearm is subject to a minimum fine of three hundred dollars ($300), and confiscation of the firearm. Anyone falsifying a registration form may be subject to a minimum fine of three hundred dollars ($300).

(c) The Pueblo of Pojoaque Firearms Registration Form is attached to this Ordinance and the Form shall be kept on file at the Tribal Police Department.

J-15 Limited Liability of Hotelkeepers to Guests on the Pueblo of Pojoaque

(a) Hotelkeepers are liable to their guests for loss of guests' property up to a limit of one thousand dollars ($1,000), if the loss is caused by theft or negligence of a hotelkeeper or hotel employees.

(b) The hotelkeeper is not responsible for theft or loss of any money, jewels, jewelry or other valuables as the hotel provides suitable safes for the safekeeping of money, jewels, jewelry or other valuables. Safes are available in the room and at the front desk.

(c) The Limited Liability of Hotelkeepers to Guests policy shall be printed and posted conspicuously within guest rooms.

J-16 Threats or Physical Harm to Elected or Appointed Officials

(a) Any Indian or non-Indian who threatens physical harm or commits an act of physical harm to an elected or appointed Pueblo of Pojoaque Tribal Official or a person conducting the official duties of the Pueblo of Pojoaque Tribal government shall be subject to this section.

1. An elected or appointed Pueblo of Pojoaque Tribal Official is defined as any person who is elected or appointed by the Pueblo of Pojoaque General Council or Tribal Council to carry out duties on behalf of the Pueblo of Pojoaque.

2. A person conducting the official duties of the Pueblo of Pojoaque Tribal Government is defined as any person who is appointed by the Pueblo of Pojoaque to carry out official Tribal government duties.

3. A threat of physical harm is defined as any verbal or written threat of physical harm against a Tribal Official that is communicated to a third party.

4. An act of physical harm is defined as any intentional bodily touching of a Tribal Official that is intended to harm the Tribal Official.

(b) A person found guilty under this section may be subject to a minimum fine of three hundred dollars ($300) up to a maximum of five thousand dollars ($5,000), and is required to appear in Tribal Court.

J-17 Heroin Control Act

(a) The Pueblo of Pojoaque has a zero tolerance policy of heroin and intravenous use of illegal drugs. This policy includes civil and criminal prohibitions and adoption of medical treatment approaches to combat the problem to protect the community and families.

(b) The Heroin Control Act supersedes all prior conflicting provisions concerning heroin and intravenous use of illegal drugs that are contained in the Tribal Law and Order Code regulations and ordinances, lease agreements or employee handbooks.

(c) A copy of the Heroin Control Act of 2012 shall be made available to all enrolled members of the Pueblo of Pojoaque.

(d) Heroin and Intravenous Use of Illegal Drugs.

1. Any person who buys, possesses, sells or uses heroin within the exterior boundaries of the Pueblo of Pojoaque shall be considered a threat to the public health, safety and welfare.

2. Any person who admits to or is arrested for heroin or intravenous use of illegal drugs within the exterior boundaries of the Pueblo shall be considered a threat to the public health, safety and welfare and shall undergo mandatory drug testing at the time of arrest. Law enforcement shall present such findings to the Court and Tribal Officials at the time of arraignment.

3. Any person who is found guilty in any court of law of heroin or intravenous use of illegal drugs shall be considered a threat to the public health, safety and welfare.

4. Any Tribal Police Officer who suspects a person of heroin use or intravenous use of illegal drugs may petition the Tribal Court for scientific testing of the suspected user.

5. Any allegation of suspicion shall be supported by written and verified facts before scientific testing is ordered by the Tribal Court.

6. If the person suspected of heroin or intravenous use of illegal drugs tests positive for the use, they have violated the law and shall be considered a threat to the public health, safety and welfare.

(e) Penalties.

1. Any person who is a threat to the health, safety and welfare of the Pueblo of Pojoaque under the provisions of this Section shall be subject to the following penalties:

A. A minimum fine of three hundred dollars ($300) up to a maximum of five thousand dollars ($5,000); and is required to appear in Tribal Court, per violation.

B. Exclusion from the exterior boundaries of the Pueblo for a duration to be determined by the Tribal Court.

C. Immediate termination of employment and Tribal benefits for a duration to be determined by the Tribal Court.

D. The violator may be responsible for payment of treatment costs.

E. A neglected child adjudication of unlimited duration for any parent of an Indian child when the parent is a threat to the public health, safety and welfare under the provisions of this Section.

(f) Rescission of Penalties.

1. The Tribal Court shall provide a written Order to the person who is determined to be a threat to the public health, safety and welfare. The Order shall set out the conditions under which any of the penalties imposed may be rescinded.

2. In the case of neglected child adjudication, the parent has two (2) years in which to successfully comply with the Tribal Court's Order. If the parent has not successfully complied with the Tribal Court's Order within two (2) years, termination of parental rights shall be initiated by the Pueblo of Pojoaque Social Services Department. The two (2) years may be extended by the Tribal Court with a written justification for the extension.

J-18 Graffiti and Vandalism Ordinance

(a) This Section shall apply to Tribal Members and visitors to the Pueblo who are over the age of sixteen (16) at the time the offense was committed.

(b) Graffiti and vandalism is defined as intentionally or maliciously defacing or destroying any Pueblo property, any real property of another, or any personal property of another, when the graffiti or other material used for the graffiti or vandalizing is ink, paint, spray paint, crayon, charcoal, acid, or any physical force that is applied without the consent or reasonable grounds to believe that there is consent of the Pueblo or the owner of the property.

(c) For the first offense, whoever commits graffiti or vandalizes is subject to a minimum fine of three hundred dollars ($300) up to a maximum of five thousand dollars ($5,000), eighty (80) hours of mandatory community service, make restitution to the Pueblo or the property owner, and appear in Tribal Court.

(d) For the second offense, any visitor who commits graffiti or vandalizes shall be excluded from the Pueblo for life, and shall be required to make restitution to the Pueblo or the property owner.

(e) For the second offense, any Tribal Member who commits graffiti or vandalizes shall lose all Tribal privileges and services for one (1) year, and shall be required to make restitution to the Pueblo or the property owner.

(f) For the third offense, any Tribal Member who commits graffiti or vandalizes shall lose all Tribal privileges and services for five (5) years, shall be excluded from the Pueblo for five years, and shall be required to make restitution to the Pueblo or the property owner.

J-19 Civil Forfeiture Code

(a) Property is subject to forfeiture in a civil proceeding only upon a showing of probable cause that the property could be used to commit or facilitate commission of a crime under Tribal, State, or Federal law.

(b) Any property obtained from proceeds of criminal activity is subject to forfeiture. Conviction in Tribal, State, or Federal courts is not a prerequisite to forfeiture proceedings.

(c) Items Subject to Forfeiture. The following are subject to forfeiture whenever they appear within the exterior boundaries of the Pueblo of Pojoaque:

1. All controlled substances and all controlled substance analogs which have been manufactured, distributed, dispensed or acquired in violation of the federal Controlled Substances Act (21 U.S.C. 801, *et seq*.), the federal Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), any offense under New Mexico State law involving manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance (as defined in section 102 of the federal Controlled Substances Act (21 U.S.C. 802));

2. Any marijuana over the amount of two ounces;

3. Cocaine, or any of its derivatives, in any amount;

4. Methamphetamine, or any of its derivatives, in any amount;

5. Heroin, or any of its derivatives, in any amount;

6. All raw materials, products and equipment of any kind, including firearms, which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any of the substances described in Paragraphs 1 through 5;

7. All property which is used or intended for use as a container for property described in Paragraphs 1 through 6;

8. All conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation of property described in Paragraphs 1 through 6;

9. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in trafficking of Paragraphs 1 through 6;

10. Narcotics paraphernalia or money which is a fruit or instrumentality of any crime involving Paragraphs 1 through 6; and

11. Property obtained from proceeds of criminal activity.

(d) Exceptions to Forfeiture of Conveyances. Notwithstanding Subsection (a):

1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture, unless it appears that the owner or other person in charge of the conveyance is a consenting party to the possession or trafficking in substances listed in Subsection (a), Paragraphs 1 through 6.

2. No conveyance is subject to forfeiture when the possession or trafficking in substances listed in Subsection (a), Paragraphs 1 through 6 was done without the owner's knowledge or consent.

3. Forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission.

(e) Forfeiture Procedure.

1. Property subject to forfeiture and disposal under the Civil Forfeiture Code may be seized by the Pueblo of Pojoaque Tribal Police upon an Order issued by a Tribal Official or the Tribal Court.

2. Seizure may be made without an Order when the Tribal Police have probable cause to believe that the property is listed in Subsection (a).

3. Property taken or detained under this Section shall not be subject to replevin, but is deemed to be in the custody of the Tribal Police.

4. The Pueblo shall begin forfeiture proceedings in the Tribal Court no later than thirty (30) days after the property is seized.

5. The forfeiture procedure shall follow all guarantees of the Indian Civil Rights Act.

6. Property is subject to forfeiture in the civil proceeding only upon a showing of probable cause that the property could be used to commit or facilitate commission of a crime under Tribal, State, or Federal law.

7. A Tribal Court Order shall direct the disposal of any forfeited property.

J-20 Skateboard, Scooter, Roller Skates, and Bicycles Ordinance

(a) Any person riding a skateboard, scooter, roller skates, or bicycle on the sidewalks of businesses located in the main shopping area of the Pueblo of Pojoaque or at the Towa Golf Course shall be in violation of this Ordinance. The main shopping area includes the Supermarket, strip shopping center, and all other surrounding businesses.

(b) The Realty Department shall post notices throughout the main shopping area that it is a violation of the Law and Order Code to operate a skateboard, scooter, roller skates, or bicycle on the sidewalks within the shopping area. The notice shall also state that violators are subject to fines and/or confiscation of the skateboards and scooters. The Towa Golf Course shall notify all persons in an appropriate manner of this Ordinance.

(c) Any Pueblo of Pojoaque Tribal Police Officer may enforce this Ordinance by issuing the alleged violator a civil citation, noting the date, time, and nature of the offense. A copy of the civil violation shall be given to the alleged violator. The citation shall give the alleged violator the option of paying a fine or appearing before the Tribal Court to contest the citation.

(d) Any violation of this Ordinance shall be subject to the exclusive jurisdiction of the Tribal Court.

(e) The fines shall be a minimum of three hundred fifty dollars ($300) up to a maximum of five thousand dollars ($5,000) for the first offense. Second violations shall be subject to confiscation of the skateboard, scooter, roller skates, or bicycle. Violators are also responsible for any destruction or injuries caused by their actions.

(f) The Court, in its sole discretion, may order community service at the rate of ten dollars ($10.00) per hour in lieu of a fine.

J-21 Incorporation of Subpart M as Civil Infractions

(a) The Pueblo of Pojoaque retains inherent Sovereign power to exercise civil authority over the conduct of both Indians and non-Indians on lands within the exterior boundaries of the Pueblo.

(b) "Civil infraction" means a civil offense which is not a crime and the fine or other consequence imposed is not a criminal punishment and does not include any possibility of incarceration.

(c) Any person who commits a civil infraction has engaged in conduct that threatens the political integrity, economic security, health, or welfare of the Pueblo.

(d) The offenses in Subpart M, and any other criminal infraction in the Law and Order Code, are hereby incorporated as civil infractions under this Subpart J of the Law and Order Code.

(e) Any person found to have committed a civil offense incorporated from Subpart M, or any other criminal infraction in the Law and Order Code are subject to a minimum fine of $300 fine up to a maximum fine of $5,000, except for civil infractions that require a court appearance.

(f) If an offender is required to appear in Court for a civil infraction, the offender may be subject to the maximum fine for the corresponding criminal offense.

(g) Any person found to have committed a civil infraction may be subject to exclusion from the exterior boundaries of the Pueblo pursuant to Subpart P (Removal and Exclusion) of the Law and Order Code.

(h) Nothing in this section precludes the criminal prosecution of any individual subject to the Pueblo's criminal jurisdiction for offenses under Subpart M.

SCHEDULE OF FINES/APPEARANCE REQUIREMENTS

Offense	**Civil Penalty**
M-2 – Abduction	$300.00 to $5,000.00
M-3 – Aiding and Abetting	$300.00 to $5,000.00
M-4 – Assault	$300.00 to $5,000.00
M-5 – Battery	$300.00 to $5,000.00
M-6 – Bigamy	$300.00 to $5,000.00
M-7 – Bribery – Giving	$300.00 to $5,000.00
M-8 – Bribery – Receiving	$300.00 to $5,000.00

M-9 – Bribery – Soliciting	$300.00 to $5,000.00
M-10 – Carrying a Concealed Weapon	$300.00 to $5,000.00
M-11 – Child Molesting	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
M-12 – Conspiracy	$300.00 to $5,000.00
M-13 – Contributing to the Delinquency of a Minor	$300.00 to $5,000.00
M-14 – Criminal Negligence	$300.00 to $5,000.00
M-15 – Criminal Trespass	$300.00 to $5,000.00
M-16 – Cruelty to Animals	$300.00 to $5,000.00
M-17 – Disobedience of Lawful Order of the Court	$300.00 to $5,000.00
M-18 – Disorderly Conduct	$300.00 to $5,000.00
M-19 – Disposing of Property of an Estate	$300.00 to $5,000.00
M-20 – Escape	$300.00 to $5,000.00
M-21 – Extortion	$300.00 to $5,000.00
M-23 – Failure to Send Children To School	$300.00 to $5,000.00
M-24 – Failure to Support	$300.00 to $5,000.00
M-25 – Forgery	$300.00 to $5,000.00
M-26 – Fraud	$300.00 to $5,000.00
M-27 – Gambling	$300.00 to $5,000.00
M-28 – Unlawful Restraint	$300.00 to $5,000.00
M-29 – Indecent Exposure	$300.00 to $5,000.00
M-30 – Inhaling Toxic Vapors	$300.00 to $5,000.00
M-31 – Interfering with an Officer	$300.00 to $5,000.00
M-32 – Joyriding	$300.00 to $5,000.00
M-33 – Liquor Violation	$300.00 to $5,000.00
M-34 – Littering	$300.00 to $5,000.00
M-35 – Maintaining a Public Nuisance	$300.00 to $5,000.00
M-36 – Misusing Property	$300.00 to $5,000.00
M-38 – Perjury	$300.00 to $5,000.00
M-40 – Prostitution	$300.00 to $5,000.00
M-41 – Public Intoxication	$300.00 to $5,000.00
M-42 – Receiving Stolen Property	$300.00 to $5,000.00
M-43 – Refusing to Aid and Officers	$300.00 to $5,000.00
M-44 – Removal or Destruction of Antiquities	$300.00 to $5,000.00
M-45 – Shoplifting	$300.00 to $5,000.00
M-46 – Theft	$300.00 to $5,000.00

M-47 – Unlawful Burning	$300.00 to $5,000.00
M-48 – Malicious Mischief	$300.00 to $5,000.00
M-49 – Driving Under the Influence of Intoxicating Liquor or Drug	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
M-50 – Possession of a Weapon While Under the Influence of Intoxicating Liquor or Drug	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
M-51 – Shooting in Residential Areas	1st Offense – up to $5,000.00 fine plus one (1) year banned from Pueblo. 2nd Offense – up to $5,000.00 fine plus five (5) years banned from Pueblo. **MUST SCHEDULE COURT DATE**
M-52; J-16 – Threats of Physical Harm to Elected or Appointed Officials	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
M-53 – Act to Deter the Harboring of Fugitives and Criminals	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
M-55 – Trafficking in Illegal Drugs	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
M-56 – Dangerous Drugs Policy	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
M-57, J-17 – Heroin Control Act	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
M-58 – Prohibited Cannabis Activities	$300.00 to $5,000.00
M-59 – Illegal Opioids and Stimulant Control Act	Up to $5,000.00 **MUST SCHEDULE COURT DATE**

Other Civil Infractions

K-4 – Domestic Violence Ordinance	Up to $5,000.00 **MUST SCHEDULE COURT DATE**
J-11 – Unlawful Use of Identification Cards and Documents	$300.00 to $5,000.00
J-12 – Civil Liability for Conversion	No more than four (4) times the value of goods converted, costs of the lawsuit, and reasonable attorney's fees; exclusion **MUST SCHEDULE COURT DATE**
J-13 – Harassment Ordinance	$300.00 to $5,000.00 **MUST SCHEDULE COURT DATE**
J-14 – Firearms Registration	Three Hundred Dollars ($300)
J-18 – Graffiti and Vandalism Ordinance	$300.00 to $5,000.00 **MUST SCHEDULE COURT DATE**
J-20 – Skateboard, Scooter, Roller Skates, and Bicycles Ordinance	$300.00 to $5,000.00

J-22 Housing Code

General Provisions.

(a) Applicability. The provisions of this Subpart apply to all private rental residences owned, mortgaged, or operated by the Pueblo of Pojoaque government. This Subpart does not apply to private rental residences owned, managed, or operated by a Tribally-chartered corporation or public housing owned and operated by the Pueblo. This Subpart also does not apply to commercial leases on Pueblo land.

(a) Jurisdiction.

1. As limited by section (a), the provisions of this Subpart shall apply to all persons, Pueblo entities, and property subject to the governing authority of the Pueblo as established by Pueblo laws, regulations, and resolutions, including but not limited to the land within the exterior boundaries of the Pueblo, lands owned by, held in trust for, leased or used by the Pueblo, its housing entity, or any other entity of the Pueblo, and Indian Country of the Pueblo as may be defined from time to time by the laws of the Tribe or the United States.

2. Jurisdiction is extended over all persons or entities within the jurisdiction of the Pueblo who rent, lease, or allow persons to occupy housing or dwellings for the purpose of establishing a residence, and all persons who rent, lease, or occupy such structures that are subject to this Subpart. Such personal jurisdiction is extended over all persons and entities, whether or not they are Pueblo members and whether Indian or non-Indian.

3. The Tribal Court shall have exclusive jurisdiction to enforce this Subpart.

(c) Relation to Other Laws.

1. Applicable Law: Unless affected and displaced by this Subpart, principles of Pueblo law and equity will apply and the general principles of law of other jurisdictions may be used as a guide to supplement this Subpart as determined by the Tribal Court.

2. Conflict of Laws: to the extent that any provisions in this Subpart conflict with any federal laws that apply to the subject matter of this Subpart, the federal law will control as determined by the Tribal Court.

(d) Definitions.

1. "Action, Suit, Lawsuit, Claim" shall include any dispute between persons or entities that relates to any private rental housing or dwelling, including claims for payment, damage, condition, and occupancy of such housing.

2. "Adult" means a person who is 18 years of age or older.

3. “Drug-Related Criminal Activity” means the manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance as defined in the federal Controlled Substances Act, Section 102 (21 U.S.C. Section 802).

4. “Dwelling or Dwelling Unit” means a structure or part of a structure that is used as a home, residence, or sleeping place by any person who maintains a household.

5. “Housing Entity” means the Pueblo of Pojoaque Housing Department (PPHD).

6. “Landlord” means the Pueblo, including PPHD, or any person, entity, or government agency, that is the owner, lessor, or sublessor of a dwelling unit or residence.

7. “Nuisance” means maintenance on the Leasehold Estate of a condition which:

A. unreasonably threatens the health or safety of the public or neighboring land users; or

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

8. “Owner” is the Pueblo, including PPHD, or any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, rental agreement, or any other security arrangement.

9. “Premises” means dwelling unit or residence and all structures, facilities and areas connected with it, including grounds, areas, facilities, yards, and fences intended for the use of tenants, or which is either installed for or by the tenants with permission of the landlord.

10. “Rent” means all payments to be made to an owner or landlord for the lease, purchase or occupancy of a dwelling or residence under an agreement for purchase or occupancy.

11. “Rental Agreement” means any written agreement, as well as valid rules and regulations, containing the terms and conditions for any use or occupancy of a dwelling, residence, or premises subject to this Subpart. Allowing occupancy in a dwelling, residence, or on the premises subject to this Subpart without a written rental agreement is prohibited.

12. “Tenant” means any person who rents, purchases, or occupies a dwelling under an agreement to rent, occupy, or rent-to-own a dwelling or residence, including any person actually occupying a dwelling or dwelling that the person does not own. The term includes any person of the same household as the tenant, including guests, actual occupiers, heirs, or successors to any interest in a dwelling.

13. “Tribal Court” means the Pueblo of Pojoaque Tribal Court.

14. “Waste” means spoilage or destruction by a tenant of land, buildings, structures, yards, trees, or other improvements that result in substantial injury to the landlord’s interest in the property.

Landlord/Tenant Responsibilities and Remedies

(e) Rights, Obligations, and Remedies. The rights, obligations, and remedies of landlords and tenants, as defined in this Subpart, are contained in:

1. the Pueblo Law and Order Code;

2. applicable federal statutes, regulations, and agreements;

3. leases and subleases to which the Pueblo is a party;

4. agreements with occupiers of dwellings or residences;

5. building or housing codes; and

6. the laws established by this Subpart.

(f) Rental Agreements.

1. Effect of Rental Agreements. The provisions of this Subpart, as well as the applicable laws identified in paragraph (e), establish the minimum rights and responsibilities of landlords and tenants.

2. Terms Prohibited in Rental Agreements. No rental agreement shall provide that the tenant agrees to:

A. waive or forfeit rights or remedies under this Code or any other applicable laws;

B. to exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs associated with it;

C. to permit the landlord to dispossess the tenant without a Court order;

D. to pay a late charge prior to the expiration of a grace period provided for in subsection (m).

A rental agreement provision prohibited by this subsection shall be unenforceable.

3. Term of Tenancy. In the absence of a definite term in the rental agreement, or in the event a rental agreement term expires and is not extended in writing or by renewal, the tenancy shall be month-to-month until a new rental agreement is entered into or the tenancy terminated.

4. Payment of Rent. In the absence of definite terms in the rental agreement, rent is payable at the landlord's office. In the absence of definite terms, the amount of rent shall be the fair market value of the rental unit.

5. Rules and Regulations. The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit. Such rules and regulations are enforceable against the tenant only if:

A. their purpose is to promote the convenience, safety, or welfare of tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for all tenants generally;

B. they are reasonably related to the purpose of ensuring, convenience, safety, and welfare of all tenants and protection of the property;

C. apply to all tenants in the premises in a fair manner;

D. they are clear as to what conduct is allowed or prohibited; and

E. the tenant has notice of the rules and regulations when entering the rental agreement or when they are adopted.

If a rule or regulation results in a substantial modification of the terms of the rental agreement after the tenant enters into an agreement, such rule or regulation is not valid unless the tenant consents to such rule or regulation in writing either through a rental agreement renewal or by signing a copy of the rules and regulations.

(h) Landlord Responsibilities. Except as otherwise fairly and reasonably provided in a rental agreement, each landlord subject to the provisions of this Code shall:

1. maintain the dwelling unit in a decent, safe, and sanitary condition;

2. comply with applicable building and housing codes;

3. make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant or a guest, in which case such duty shall be the responsibility of the tenant;

4. keep common areas clean, safe, and secure;

5. ensure tenant access to the dwelling unit;

6. maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such things are not the responsibility of the tenant or are generated by an installation within the exclusive control of the tenant;

7. provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste;

8. provide running water, hot water, and heat in accordance with applicable codes, except to the extent the tenants are required to provide these services for themselves;

9. guarantee a right of quiet enjoyment to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises do not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quite enjoyment of the tenants;

10. give sole possession of the premises to the tenant in accordance with the rental agreement and refrain from locking tenants out of a dwelling unit without their consent; and

11. disclose in writing, the name, address, and telephone number of the person responsible for receiving rent, notices, and demands under this Subpart, the person authorized to manage the dwelling unit or residence, the owner of the premises or the owner's agent, and the person responsible for making repairs, where they are required.

(i) Tenant Responsibilities. Except as otherwise fairly and reasonably provided in a rental agreement, each tenant subject to the provisions of this Code shall.

1. pay rent without demand or notice at the time and place agreed upon by the parties;

2. immediately notify the landlord of any defects in the premises hazardous to life, health, or safety;

3. keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner;

4. use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances that are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner;

5. refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and to require guests to act in like manner;

6. pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or his guests, or to repair such damages as required under the rental agreement, within thirty (30) calendar days of such damage;

7. conduct him or herself, and require guests to conduct themselves, in a manner that does not disturb the quiet enjoyment of others, cause a breach of the peace, violate the law, or endanger anyone else;

8. not give up the dwelling unit to others, assign or transfer a rental agreement, or sublease the dwelling unit without the written permission of the landlord;

9. use the dwelling unit only for residential purposes as agreed, and not to use the unit or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it;

10. abide by all rules and regulations promulgated by the landlord in accordance with subsection (g) of this Code; and

11. provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit to prospective buyers or tenants, provided that such access shall be at reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant's neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

(j) Tenant Remedies. Where a landlord has not complied with the responsibilities regarding dwelling unit conditions, set forth in subsection (h) of this Code, and where the tenant has given notice to the landlord and the landlord has failed, within a reasonable period of time, to cure the noncompliance, the tenant may:

1. make necessary repairs and deduct the cost of such repairs from one month's rent, as long as the costs do not exceed one month's rent and the tenant provides receipts or invoices for the repairs, or as otherwise provided in the rental agreement; or

2. institute an action in the Tribal Court seeking:

A. an order compelling the landlord to comply with the responsibilities as set forth in subsection (h) of this Code;

B. an award of money damages, which may include a retroactive abatement of rent; and/or

C. such other relief in law or equity as the court may deem proper, provided that no tenant may institute such an action if a valid notice to vacate based upon nonpayment of rent has been served by the landlord prior to the tenant's institution of the action; or

3. terminate the rental agreement pursuant to the terms of the rental agreement.

(k) Landlord Remedies. Where a tenant has not complied with this Code or the agreement of the parties, the landlord has the right to:

1. give reasonable notice to the tenant to comply with the tenant's obligations and pay any monies due and owing under the rental agreement or the landlord has right to terminate the rental agreement;

2. require repairs or maintenance that are the responsibility of the tenant and/or require compliance with reasonable rules and regulations for occupancy; or

3. seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which the landlord may be entitled by law or the agreement of the parties.

(l) Abandoned Dwelling Units.

1. landlord may regain possession of a dwelling unit, in accordance with this section, where the tenant has vacated a residence, dwelling, or premises without notice to the landlord and does not intend to return (evidence of which may be determined by the tenant's removal of personal property from the premises or other reasonable evidence), and either:

A. nonpayment of rent for two or more months;

B. terminated water or electrical utility service for more than one month; or

C. an express statement by the tenant that he or she does not intend to occupy the premises after a specified date.

2. The landlord may the send notice to the tenant at the tenant's last known address both by regular mail, postage prepaid, and by certified nail, return receipt requested, stating that:

A. the landlord has reason to believe that the occupant has abandoned the dwelling unit;

B. the landlord intends to reenter and take possession of the dwelling unit unless the occupant contacts the landlord's office within ten (10) days of receipt of the notice;

C. if the tenant does not contact the landlord, the landlord intends to remove any possessions and personal effects remaining in the premises and to rent the premises; and

D. if the tenant does not reclaim such possessions and personal effects within sixty (60) days after the notice, they will be disposed of in accordance with subsection ____ of this Code.

The notice shall be in clear and simple language and shall include a telephone number and a mailing address at which the landlord can be contacted. If the notice is returned as

undeliverable, or if the tenant fails to contact the landlord within ten (10) days of the receipt of the notice, the landlord may reenter and take possession of the dwelling unit, at which time any rental agreement in effect shall terminate.

3. The landlord need not comply with the Notice and Eviction procedures of this Supbart to obtain possession of a dwelling unit or residence that has been abandoned.

4. If the abandoned property is of Tribal cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or make and document at least one attempt to contact a family member to return these items.

Grounds for Eviction and Notice to Vacate

(m) Grounds for Eviction. A person may be evicted for:

1. Nonpayment of rent under a rental agreement, or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

2. Any agreement in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.

3. Nuisance, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quite enjoyment of a dwelling unit.

4. Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with subsection (g), this Code, or any applicable building or housing codes.

5. Occupation of any premises without permission or agreement, following any reasonable demand by a person with authority over the premises to leave.

6. Under other terms in the rental agreement that do not conflict with the provisions of this Code.

(n) Notice to Vacate Requirements.

1. When Notice to Vacate is Required. When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in subsection (m), the landlord shall give notice to the adult tenants, to vacate the dwelling unit according to the provisions of this section and any additional provisions in the rental agreement that do not conflict with this Subpart.

2. Purpose of Notice to Vacate. The purpose of the notice to vacate is to provide advance notice to the tenant of a specific problem that needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord to resolve the problem.

3. Statement of Grounds for Eviction Required. The notice to vacate shall be addressed to the adult tenants of the dwelling unit or residence and shall state the legally cognizable reasons(s) for termination of the tenancy and the date by which the tenant is required to vacate the dwelling unit.

4. Form of Notice. The notice shall be in writing and contain, at a minimum, the following information:

A. [Landlord name] hereby gives [name of tenant(s)] notice that all occupants of this residence or dwelling unit must vacate the residence located at;

B. the address or other reasonable description of the location of the dwelling unit or residence;

C. date of notice;

D. reason(s) [insert the legally cognizable reason or reasons for the notice to vacate using the language in this code or other allowable reasons]; and

E. signature, name and address of the landlord, as well as the date and place of signing.

5. Time Requirements for Notice. The notice must be delivered the following periods of time:

A. No less than seven (7) calendar days prior to the date to vacate specified in the notice for any failure to pay rent or other payments required by the agreement.

B. No less than three (3) calendar days prior to the date to vacate specified in the notice for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

C. No less than fourteen (14) calendar days in all other situations.

(o) Serving the Notice to Vacate. Any notice to vacate must be in writing, and must be delivered to the tenant in the following manner:

1. Delivery must be made by an adult person.

2. Delivery will be effective when it is:

A. Personally delivered to a tenant with a copy delivered by mail; or

B. Personally delivered to an adult living in the premises with a copy delivered by mail; or

C. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

3. If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:

A. Certified mail, return receipt requested, at the last known address of the tenant, or

B. Securely taping a copy of the notice to the main entry door of the residence or main entrance of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in the Tribal Court and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises or the tenant's last known address.

4. The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

(p) Pre-Eviction Options.

1. Negotiated Settlement. After a Notice to Vacate is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.

2. Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, and Judicial Eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

3. Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:

A. the parties may employ the use of advocates or attorneys;

B. the parties may employ the use of a mediator or conciliator;

C. the parties may agree to options set forth in subsection ____;

D. the parties may agree to dismiss the matter in exchange for an agreement that represents a fair and reasonable resolution at a fair value for use of the dwelling; or

E. the parties may agree to stipulate to a judgment to be entered by the Court.

Judicial Eviction Procedures

(q) Summons and Complaint. If, after the date set forth in the Notice to Vacate for the tenant to vacate the premises, the tenant has not vacated the premises, the landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

1. the names of the adult tenant(s) against whom the suit is brought;

2. a description of the rental agreement, if any;

3. the address or reasonable description of the location of the premises;

4. the grounds for eviction;

5. a statement showing that the Notice to Vacate and any required termination notices have been served in accordance with this code or other applicable law; and

6. a statement of the relief demanded, including any claim(s) for possession of the premises, damages, fees, costs, or other special relief.

7. If the landlord is an Indian Housing Entity, a statement that the Indian Housing Entity has complied with all required regulatory processes prior to filing the eviction action.

(r) Action Upon Filing Complaint. When a complaint is filed in the Tribal Court, it shall be immediately presented to a Tribal Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with subsection (q) and served as set forth in subsection (o), issue an order requiring the Defendant named in the complaint to appear before the Court on a certain date (Date for Appearance). The Date for Appearance shall be no less than three (3) calendar days after the date of the order in matters involving serious nuisance or ten (10) calendar days in all other cases. Upon setting of the Date for Appearance, the Court shall serve the Defendant, or require the Plaintiff to serve the Defendant, with the complaint and a summons to appear for the court date.

(s) Commencement of Proceedings.

1. If the tenant appears before the Court in person or in writing to contest the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.

2. The Court shall set a hearing date which is no more than fifteen (15) calendar days following the Date for Appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.

3. A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in §1-3-1(C), and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

4. The Court may in its discretion on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

(t) Defenses. The Court shall grant the remedies allowed in this Code, unless it appears by the evidence that:

1. The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.

2. The landlord has failed or refused to make repairs which are the landlord's responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.

3. There are monies due and owing to the tenant because the tenant has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he or she fails or refuses to pay the reasonable rental value of the premises.

4. That due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.

5. That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant the landlord a remedy.

6. The landlord is evicting the tenant for unlawful discriminatory reasons.

7. The landlord terminated the tenancy in retaliation for the tenant's attempt to secure his

or her rights under this Code or to force the landlord to comply with the landlord's duties under this Code.

8. Any other material or relevant fact the tenant might present that may explain why an eviction is unjust and unfair.

(u) Discovery and Prehearing Proceedings. Extensive, prolonged, or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

(v) Evidence. Evidence in proceedings under this Code shall be under the provisions of the general tribal code of evidence.

(w) Judgment.

1. Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

A. order the immediate eviction of a tenant and delivery of the premises to the landlord;

B. grant actual damages as provided in the agreement of the parties or this Code, including interest;

C. order the parties to carry out an obligation required by law;

D. establish a payment plan for the tenant;

E. order rent payments out of Pueblo benefit payments or through garnishment;

F. establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;

G. remediate the action in part or in whole through appropriate recalculation of rent;

H. order the tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;

I. order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation;

J. order the parties into negotiations as provided in this Code; or

K. grant any relief provided in this code or allowed in law or equity.

2. If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

(x) Form of Judgment. The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render a decision quickly after both parties have rested their case and award costs and restitution as appropriate.

(y) An eviction order may be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. To execute the order, the officer shall:

1. remove all evicted persons from the dwelling and verbally order them not to re-enter;

2. provide a copy of the eviction order to adult tenants and have at least one adult tenant sign a form acknowledging receipt of the order;

3. post copies of the order of eviction on the doors or gates of the premises if there is not any adult tenant present at the time of execution and sign a form containing the officer's name, address of premises, date on which order was left at premises, and reason the order was not signed by a tenant [no one present, no adults present, dangerous condition present such as a vicious dog, etc.];

4. return the signed form describing service of the order to the Court; and

5. supervise the removal of the possessions of the evicted persons.

Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it with in five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure code and/or tribal small claims procedure code. All other portions of the judgment shall be subject to execution in the manner otherwise provided under tribal law.

(z) Stay of Execution. If judgment for possession of the dwelling unit enters in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order if within five (5) days of the judgment being rendered, the following is established:

1. Good and reasonable grounds affecting the well being of the party are stated; or

2. There would be no substantial prejudice or injury to the prevailing party during the

period of the stay; or

3. Execution of the judgment could result in extreme hardship for the tenant(s); or

(aa) Appeals. Appeals under this Chapter shall be according to the general tribal appellate provisions.

(bb) Miscellaneous Complaints and Claims. Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this code may be made under the general tribal civil procedure code and/or tribal small claims procedure code.

(cc) Notice to Leave the Premises. Any notice to leave a premises, shall be by written order of the court, and shall be delivered to the tenant in the following manner:

1. Delivery shall be made by:

   A. A law enforcement officer of the Tribe or an agency of the United States Government, or

   B. Any person authorized by the Tribal Court.

2. Delivery will be effective when it is:

   A. Personally delivered to a tenant with a copy delivered by mail, or

   B. Personally delivered to an adult living in the premises with a copy delivered by mail, or

   C. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

3. If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:

   A. certified mail, return receipt requested, at the last known address of the landlord or tenant; or

   B. securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

(dd) Forcible Eviction.

1. Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if the tenant or other occupants do not vacate the premises voluntarily by the effective date, the tenant and other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (3) below.

2. Following eviction, the Court may allow the landlord, the Pueblo, or the United States Government access to any property leased by either of them for purposes of preserving and securing it.

3. Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the landlord attempt to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the owner. If the abandoned property is of Native American cultural, religious, or ceremonial significance, the landlord shall have a duty to locate a family member or the Tribe that it may belong to in order to return these items at the family or Tribe's cost.

(ee) No Self-Help Eviction. No landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. All landlords shall give a notice to vacate and obtain a court order as provided in this Code.

(ff) Security Deposits.

1. Security Deposit Limits**.** A landlord may demand a security deposit of an amount equal to one-hundred dollars ($100) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history or prior damages.

2. Payment of Security Deposit at Termination of Tenancy. The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit was deposited less the value of any damages

which any person, who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a result such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear.

3. Action to Reclaim Security Deposit. Any tenant may bring a civil action in Tribal Court to reclaim any part of a security deposit which may be due.

J-23 Leasehold Mortgages

General Provisions.

(a) Purpose. The purpose of this Ordinance is to assist the Pueblo, the Pueblo of Pojoaque Housing Department ("PPHD"), and individual tribal members to obtain financing for the purchase, rehabilitation, and construction of residential housing and related infrastructure on Pueblo land, including but not limited to, conventional mortgage lending, lending under government loan guarantee programs, and under the loan acquisition programs of Fannie Mae, a corporation organized and existing under the laws of the United States ("Fannie Mae"). The Ordinance seeks to achieve this purpose by providing legal procedures that will allow mortgaging of leasehold estates on tribal trust lands.

(b) Relation to Other Laws.

1. Applicable Law: Unless affected and displaced by this Subpart, principles of law and equity will apply and the general principles of law of other jurisdictions may be used as a guide to supplement this Subpart as determined by the Tribal Court.

2. Conflict of Laws: to the extent that any provisions in this Subpart conflict with any federal laws that apply to the subject matter of this Subpart, the federal law will control as determined by the Tribal Court.

(c) Definitions.

1. "Lease" means the residential ground lease or other agreement for use of Pueblo trust land on which a Leasehold Mortgage has or will be given.

2. "Leasehold Estate" means a leasehold estate established pursuant to a Lease between the Pueblo, as Lessor, and a Tribal organization, entity, member or other individual, as Tenant or Lessee; or between a Tribal organization, entity, or member, as Sublessor, and the Pueblo as Sublessee.

3. "Leasehold Mortgage" means the first-lien mortgage of a Leasehold Estate given to secure a mortgage loan made by a Mortgagee (e.g. – a bank).

4. "Leasehold Mortgage Foreclosure Proceeding" means a proceeding in Tribal Court:

A. to foreclose the interest of the Mortgagor(s) (i.e. the person or entity holding the mortgage from a lender), and each person or entity claiming through the Mortgagor(s), in a Leasehold Estate on which a Leasehold Mortgage has been made; and/or

B. to assign such Leasehold Estate to the Mortgagee or the Mortgagee's successors and assigns.

5. "Lessor" means the Pueblo or the PPHD. The Pueblo is the beneficial or equitable owner of the land underlying a Leasehold Estate on which a Leasehold Mortgage has been given. The Lessor shall include the successor(s) or assign(s) of such Lessor.

6. "Lessee" means a Tenant or any person or Pueblo entity who holds a Lease from the Pueblo.

7. "Lien" means a charge imposed upon specific property, by whichit is made a security for the performance of an act.

8. "Mortgagor" or "Borrower" means the Pueblo or any Pueblo member who has executed a Leasehold Mortgage, including any heirs(s), successor(s), executor(s), administrator(s), or assign(s) of such member, or the PPHD if it enters into a leasehold mortgage.

9. "Mortgagee" or "Lender" means the lender under any Leasehold Mortgage or any successors or assigns of any such lender, including HUD or Fannie Mae.

10. "Nuisance" means maintenance on the Leasehold Estate of a condition which:

A. unreasonably threatens the health or safety of the public or neighboring land users; or

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

11. "Subordinate Lienholder" means the holder of any lien, including a mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this Ordinance; provided, however, such terms shall not include the Tribe with respect to a claim for a Tribal leasehold tax.

12. "Tribal Court" means the Pueblo of Pojoaque Tribal Court.

13. "Tribal Recording Clerk" means the person designated by the Pueblo to perform recording functions required by this document or any deputy or designee of such person.

14. "Unlawful Detainer Action" is a suit brought before the Tribal Court to terminate a lessee's or sublessee's interest in a Leasehold Estate and/or to evict any person from occupancy of a Leasehold Estate.

15. "Waste" means spoil or destruction of land, buildings, landscaping, trees, or other improvements on the Leasehold Estate that results in substantial injury to the Lessor's interest in the Leasehold Estate.

16. "Writ of Restitution" is an order of the Tribal Court:

A. restoring an owner, Lessor, Mortgagee to possession of a Leasehold Estate subject to a Leasehold Mortgage; and

B. evicting a Lessee or other occupant from such property.

(d) Exclusivity. Notwithstanding any other provisions of the Pueblo of Pojoaque Law and Order Code, this Subpart shall provide the exclusive procedures for enforcement of loan agreements relating to Pueblo trust lands.

(e) Jurisdiction. The provisions of this Subpart shall apply to all persons, Pueblo entities, and property subject to the governing authority of the Pueblo as established by Pueblo laws, regulations, and resolutions including but not limited to the land within the exterior boundaries of the Pueblo, lands owned by, held in trust for, leased or used by the Pueblo, its housing entity, or any other entity of the Pueblo, and Indian Country of the Pueblo as may be defined from time to time by the laws of the Tribe or the United States. The Tribal Court shall have exclusive jurisdiction to enforce this Subpart.

Recording Leasehold Security Interests.

(f) Priority. A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this Ordinance shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim (except a lien or claim arising from a Tribal tax assessed against the Leasehold Estate subject to the Leasehold Mortgage).

(g) Recording.

1. Leases and Leasehold Mortgages shall be recorded at the offices of:

A. the Bureau of Indian Affairs Area Land Titles and Records Office; and

B. the Pueblo Realty Department.

2. Any individual entity, organization, or institution requiring that a notice of lien upon real property be filed in the office of the county clerk of the county in which the real property subject to a federal lien is situated shall be responsible for the filing the document with the county and paying the county filing fee.

3. The Pueblo Recording Clerk shall maintain a system for the recording of Leasehold Mortgages and such other documents as the Pueblo may designate by law or resolution, including, without limitation, the Lease.

4. The Tribal Recording Clerk shall endorse upon any Lease and Leasehold Mortgage or other document received for recording the following:

A. the date and time of receipt of the Lease and the Leasehold Mortgage or other document;

B. the filing number to be assigned by the Tribal Recording clerk, which shall be a unique number for each Lease and Leasehold Mortgage or other document received.

C. the name of the Tribal Recording Clerk receiving the Lease and Leasehold Mortgage or other documents.

Upon completion of the above endorsements, the Tribal Recording Clerk shall make true and correct copies of the Lease and Leasehold Mortgage or other security instrument and shall certify each copy as follows:

PUEBLO OF POJOAQUE

I certify that this is a true and correct copy of a document received for recording on this date.

Given under my hand this _____ day of _____.

_____
Signature

_____
Title

The Pueblo Recording Clerk shall maintain such copies in the records of the recording system and shall return the original Lease and Leasehold Mortgage or other document to the person or entity that presented the same for recording.

5. The Tribal Recording Clark shall also maintain a log of each Lease and Leasehold Mortgage or other document recorded in which there shall be entered the following:

A. the name of the Mortgagor(s) of each Leasehold Mortgage, identified as such;

B. the name of the Mortgagee(s) of each Leasehold Mortgage, identified as such;

C. the name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents including the Lease;

D. the date and time receipt;

E. the filing numbers assigned by the Tribal Recording Clerk; and

F. the name of the Tribal Recording Clerk receiving the Lease, Leasehold Mortgage or other document.

6. Certified copies of mortgage documents may be available for inspection and copying for a fee and will be recorded with the BIA in addition to any Tribal recording provisions.

Foreclosure of Leasehold Interests

(h) Leasehold Mortgage Foreclosure Proceedings.

1. Default.

A. A borrower/mortgagor shall be considered in default when the borrower/mortgagor is thirty (30) days past due on mortgage payments.

B. When a borrower/mortgagor is thirty days past due on a mortgage and before any foreclosure action or activity is initiated, the lender/mortgagee shall complete the following:

i. make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one trip to meet the borrower/mortgagor at the mortgaged property.

ii. the lender/mortgagor shall document that it has made at least one phone call to the borrower/mortgagor for the purpose of trying to arrange a face-to-face interview.

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

D. When the borrower/mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower in writing by mail or by posting prominently on the unit, with a copy provided to the PPHD, as follows:

i. advise the borrower/mortgagor if information regarding the loan and default delinquency will be given to credit bureaus;

ii. advise the borrower/mortgagor of homeownership counseling opportunities or programs available through the Lender or otherwise; and

iii. advise the borrower/mortgagor of other available assistance regarding the mortgage default.

iv. In addition to the preceding notification requirements, the lender/mortgagee shall complete the following additional notice requirements:

a. If the Leasehold Mortgage remains past due for three installment payments, the lender/mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program;

b. Notify the borrower/mortgagor of the qualifications for forebearance relief from the lender/mortgagee, if any, and that forebearance relief may be available from the government; and

c. Provide the borrower/mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

E. If a borrower/mortgagor is past due on three or more installment payments and the lender/mortgagee has complied with the procedures in this section, the lender/mortgagee may commence foreclosure proceedings in Tribal Court as set forth in the following section (g)(2).

2. Foreclosure. Upon the default of the Mortgagor(s), and upon expiration of any applicable cure periods, under a Leasehold Mortgage, the Mortgagee or its successors and assigns, may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court as follows:

A. By filing a verified complaint:

i. citing authority for the Tribal Court jurisdiction;

ii. naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lien holder (except the Pueblo with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage), as a defendant;

iii. describing the Leasehold Estate subject to the Leasehold Mortgage;

iv. stating the facts concerning:

a. the execution of the Lease and the Leasehold Mortgage;

b. the recording of the Leasehold Mortgage; and

c. the alleged default(s) of the Mortgagor(s) (and any other facts as may be necessary to constitute a cause of action);

v. having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage, and, if applicable, assignment thereof relating to such Leasehold Estate;

vi. including an allegation that all relevant requirements and conditions prescribed by any applicable federal loan guarantee program have been compiled with by the Mortgagee; and

vii. otherwise satisfying the requirements of the Tribal Court.

B. By obtaining a summons, issued as in other cases, requiring the Mortgagor(s) and each other person or entity claiming through the Mortgagor, as defendants to appear for a trial upon the complaint on a date and time specified in the summons with the Tribal Court.

(i) Service of Process and Procedures. The Pueblo laws governing service of process and all other matters relating to the conduct of Tribal Court proceedings shall apply to any Leasehold Mortgage Foreclosure Proceeding pursuant to this Ordinance.

(j) Cure of Default by Subordinate Lienholder. Prior to the entry of a judgment of foreclosure of a Leasehold Mortgage pursuant to this Ordinance, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure such default(s), plus interest on such amounts at the rate stated in the promissory note evidencing the subordinate lien.

(k) Judgment and Remedies. If the alleged default(s) have not been cured, and if the Tribal Court should find for the Mortgage, the Tribal Court shall enter judgment:

1. Foreclosing the Leasehold Estate of the Mortgagor(s)/Borrower(s) and each other defendant named in the complaint upon whom proper and timely service has been made, including each such Subordinate Lienholder.

2. Assigning such Leasehold Estate to the Mortgagee/Lender, subject to the restrictions imposed under paragraph (k) of this Subpart.

3. The plaintiff may, in the complaint, demand judgment against every party who is personally liable for the debt secured by the mortgage or any deficiency that may remain due the plaintiff after transfer of the mortgaged premises.

4. Such other relief to which a party may be entitled in law or equity.

(l) Restrictions on the Assignability of Leasehold Estates. In the event the court issues a judgment of foreclosure under this Subpart, the following restrictions apply:

1. the Mortgagee/Lender shall give the Pueblo the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage that is subsequently obtained by the Mortgagee.

2. the Mortgagee/Lender may transfer, sell or assign the Lease and/or Leasehold Mortgage only to a Pueblo member, the Pueblo, or the PPHD.

(m) Certified Mailing to Pueblo and Lessor. With respect to any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons.

(n) Intervention. The Tribe or Lessor may, by Notice of Intervention filed with the Court and served on all parties, intervene in any proceeding under this Chapter.

Leasehold Mortgage Eviction Procedures

(o) Unlawful Detainer. A Lessee or other occupier of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer under any of the following situations.

1. Regardless of whether notice has been given, a Lessee or other occupant is guilty of unlawful detainer if he or she continues to occupy the Leasehold Estate:

A. after the expiration of the Lease term;

B. if such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim under the Lease or title to such property;

C. after the Lessor has terminated such person's tenancy pursuant to procedures that provide such person a hearing before such Lessor; or

D. after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage Foreclosure Proceeding in the Tribal Court.

2. After receiving 30 days' notice, the Lessee or occupier who remains in possession of a Leasehold Estate contrary to the terms of the notice is guilty of an unlawful detainer as follows:

A. when such person has received notice:

i. that he or she is in default in the payment of rent; and

ii. requiring him or her to either pay such rent or surrender the possession of the occupied property and such person has not either surrendered possession of such property or paid the rent within the 30-day period provided in such notice;

B. when such person shall continue to fail to keep or perform any condition or covenant of the Lease or other use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or

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

(p) Procedures for Service of Notice. Notices required or authorized in the Unlawful Detainer provisions of this Subpart shall be given in accordance with established Tribal Court rules and procedures. In the absence of such rules and procedures, notices shall be given in writing by either:

1. delivering a copy personally to the Lessee or occupier or to any adult members of his or her family residing on the Leasehold Estate; or

2. posting said notice in a conspicuous place near the entrance to the Leasehold Estate, and by sending an additional copy to the Lessee or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.

Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

(q) Complaint and Summons. The Lessor or the Mortgagee shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

1. A complaint, signed by the Lessor or the Mortgagee (or its successors or assigns), or an agent or attorney on their behalf including the following:

A. citing authority for the Tribal Court jurisdiction;

B. naming the Mortgagor(s) and each record owner claiming through the Mortgagor(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lien holder (except the Pueblo with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage), as a defendant;

C. describing the Leasehold Estate subject to the Leasehold Mortgage;

D. stating the facts concerning:

i. the execution of the Lease and the Leasehold Mortgage;

ii. the recording of the Leasehold Mortgage; and

iii. the alleged default(s) of the Mortgagor(s) (and any other facts as may be necessary to constitute a cause of action);

E. having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage, and, if applicable, assignment thereof relating to such Leasehold Estate;

F. including an allegation that all relevant requirements and conditions prescribed by any applicable federal loan guarantee program have been compiled with by the Mortgagee; and

G. otherwise satisfying the requirements of the Tribal Court.

2. A copy of the summons, issued in accordance with established Tribal Court rules and procedures. The summons shall require defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall be no less than six (6) nor more than thirty (30) days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date, and place specified in the summons. The Civil Procedure rules of this Code shall apply to all proceedings filed under this Subpart.

(r) Writ of Restitution and Judgment. The Tribal Court shall have the authority to issue a Writ of Restitution and to enter a judgment for the following:

1. back rent, unpaid utilities, and any charges due the Pueblo as Lessor or Sublessor under any lease or occupancy agreement;

2. any and all amounts secured by the Leasehold Mortgage that are due the Mortgagee;

3. damages caused by the defendants to the property other than ordinary wear and tear; and

4. other relief to which a party may be entitled in law or equity.

(s) Enforcement. Upon issuance of a Writ of Restitution by the Tribal Court, Tribal law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the Leasehold Estate. A Writ of Restitution issued under this Ordinance

shall be enforced no later than 60 days after the date of service of the summons and complaint.

Waiver of Sovereign Immunity

(t) Limited Waiver of Sovereign Immunity. In the case where the Pueblo or a Pueblo entity is the Mortgagor, pursuant to this Code at Subpart J-3, the Tribal Council may authorize a limited waiver of sovereign immunity that extends only to:

1. a complaint filed in Tribal Court pursuant to the provisions of this Subpart by a Mortgagee;

2. the terms and provisions of a Lease or Mortgage entered into by the Pueblo;

3. the term of that mortgage;

4. for the only the amount owed by the Pueblo, but no additional amounts, damages, costs, or fees;

5. only for the claims provided in this Subpart; and

6. for no other purpose.

(u) The Tribal Court shall enforce any waiver of sovereign immunity given by the Tribal Council in connection with any Lease, Mortgage, or other agreement enforceable under this Subpart or any agreement entered into by the Tribe to implement a federal government program facilitating mortgage lending on Pueblo land.

(v) Leins. Nothing in this ordinance shall be interpreted to create any lien other than a lien on a real estate lease pursuant to a residential mortgage instrument. This ordinance does not create or establish a right to a mechanics lien, abstractors lien, lien on personal property, or any other type of lien than that described in the provisions of this Subpart, nor shall it be construed to create a lien or interest in property not otherwise existing under Pueblo of Pojoaque law.

This ordinance is not intended to affect any other lien provided for by the Pueblo of Pojoaque Law and Order Code or a consensual lien now or hereafter recognized under Pueblo of Pojoaque law or the ability of the Pueblo of Pojoaque government or courts to impose equitable or constructive liens. Nonconsensual common law liens against real property shall not be recognized or be enforceable.

(w) Release of Mortgage.

1. When any debt or evidence of debt secured by a mortgage or deed of trust upon any Pueblo land has been fully satisfied, it is the duty of the mortgagee, trustee or the assignee of the debt or evidence of debt, as the case may be, to cause the full satisfaction of it to be

entered of record in the Bureau of Indian Affairs Area Land Titles and Records Office and the Pueblo Realty Department where the mortgage or deed of trust is recorded.

2. If, at any time the obligation secured by the mortgage or deed of trust is fulfilled, and the balance is zero, the mortgagee or beneficiary shall cause the mortgage or deed of trust to be released of record upon written demand of the mortgagor, trustor or the successor or assignee thereof. In the event of the death or incompetence of the mortgagor or trustor, the heirs, personal representative, conservator or guardian of the mortgagor or trustor as appropriate may make the demand for release described in this subsection.

3. Failure to release; penalty; civil liability. Any person who shall be guilty of violating this section, may be subject to a civil penalty imposed by the Tribal Court of not less than ten ($10.00) nor more than twenty-five dollars ($25.00), and shall be liable in a civil action to the owner of such real estate for all costs of clearing the title to said property including a reasonable attorney's fee.

(x) Appeals. Appeals under this Subpart shall be handled in accordance with the general Pueblo appellate provisions.

History note – This Ordinance supersedes the former Pueblo of Pojoaque Law and Order Code, Chapter 10, "Leasehold Mortgaging of Tribal Trust Lands", adopted in 1998, and any amendments.

J-24 Installment Payments for Members Struggling with Substance Misuse

(a) From time to time throughout the year, the Pueblo may disburse funds to tribal Members, including such payments as Winter Weatherization, Spring Disbursement, or Summer Disbursement.

(b) Some tribal Members are struggling with substance misuse, such that obtaining a lump sum cash payment may endanger that individual's health and safety.

(c) Any tribal disbursements provided to an enrolled Member who is struggling with substance misuse may be disbursed in monthly installments, rather than a lump sum, when directed by order of the Tribal Court.

(d) At least one month before any tribal disbursement, any relative of a person struggling with substance misuse or other interested person may petition the Tribal Court for an order to release disbursements to the person struggling with substance misuse ("Affected Member") in monthly installments. Such a petition must include specific facts establishing that installments are necessary to protect the health and safety of the Affected Member. Any such petition must be served on the Affected Member.

(e) Following submission of such a request, the Tribal Court will hold a hearing where the Affected Member is provided an opportunity to be heard and to object to the proposed monthly payments.

(f) After review of the petition and any response or arguments presented by the Affected Member, and based thereon, and in accordance with the customs and traditions of the Pueblo, the Tribal Court will make a determination as to whether the Affected Member shall receive monthly payments instead of a lump sum. The Tribal Court will issue an order setting forth the schedule pursuant to which the Affected Member will receive his or her disbursement. Copies of all such orders will be provided to Tribal Leadership and the Tribal Treasurer. The Tribal Treasurer shall provide copies of all such orders to the Assistant Controller. Any Affected Member will be provided a copy of the order pertaining to that Affected Member only.

(g) An Affected Member whose distribution is allocated on a monthly basis pursuant to this Subpart may petition the Court to amend the payment schedule or to direct payment of that Affected Member's funds to creditors or vendors.

J-25 Illegal Opioids and Stimulants Control Act

(a) Because of the increased use, possession, manufacturing, and distribution of opioids, methamphetamine, other stimulants, and illegal use of prescription drugs, the Pueblo of Pojoaque enacted this Act to replace the heroin Control Act of 2012 (Section J-17). The Opioids and Stimulants Control Act (OSCA) include civil and criminal Court-mandated sanctions and treatment approaches for affected individuals and families and to protect the community.

(b) Definitions.

1. Illegal Drug: Any drug the possession of which is prohibited by federal and/or state law, with the exception of cannabis, which is legal pursuant to the Pueblo Law and Order Code. Illegal drugs include any unlawfully prescribed drug that is not used as prescribed, such as by snorting or injecting. Illegal drugs also include any Illegal drug the possession of which is illegal when not prescribed by a licensed physician.

2. Opioids: A class of drug that includes heroin and other opium products; synthetic opioids, including by not limited to substances such as fentanyl and carfentanyl; and prescription opioid pain relievers, including, but not limited to oxycodone (Oxycotin, Percocet), hydrocodone (Vicodin), codeine, and morphine. Opioids include any natural or synthetic compound that is, or becomes, classified as an opioid.

3. Stimulants: A class of drug that includes amphetamines, methamphetamine, and amphetamine-related compounds such as Adderall, and cocaine and any cocaine derivatives such as a crack cocaine, and any synthetic stimulant compound that are illegal under federal laws such as "Bath Salts" (cathinones).

(c) The Illegal Opioids and Stimulants Control Act supersedes all prior conflicting provisions concerning possession, use, or sell of illegal drugs that are contained in the tribal Law and Order Code, regulations and ordinances, lease agreements, or employee handbooks

(d) A copy of the Illegal Opioids and Stimulants Control Act will be available to all enrolled members of the Pueblo of Pojoaque and will be publicly available as part of the Law andOrder Code.

(e) Threat to public health, safety, and welfare.

1. Any person who uses, possesses, buys, sells, gives away, or manufacturers illegal opioids or stimulants or unlawfully uses or sells prescription drugs within the exterior boundaries, or any trust land, of the Pueblo of Pojoaque is considered a threat to the public health, safety, and welfare.

2. Any person who admits to or is arrested for illegal opioid or stimulant use, possession, purchase, distribution, or manufacturing or illegal use or sell a prescription drug within the exterior boundaries, or any trust land, of the Pueblo of Pojoaque is considered a threat to the public health, safety, and welfare and may undergo mandatory drug testing at time of arrest. Law enforcement or probation may present such findings to the Court and Tribal Officials.

3. Any person who is found guilty in any court of law of illegally possessing, using, manufacturing, or distributing opioids or stimulants shall be considered a threat to the public health, safety, and welfare of the Pueblo.

4. Any Tribal Police Officer, Tribal Official, Probation Officer, or Family and Children Services Staff who suspects a person of abusing illegal opioids or stimulants or the illegal use of prescription drugs may petition the tribal court for drug testing of the suspected user.

5. Any allegation of illegal use under this Section must be supported by articulable facts before testing is ordered by the Tribal Court.

(f) Civil Offense. Any person who uses possesses, buys, sells, gives aways, or manufactures illegal opioids or stimulants or unlawfully, uses or sells prescription drugs within the exterior boundaries of the Pueblo of Pojoaque has committed an offence under this Section and will be deemed a threat to the public health, safety, and welfare of the community.

(g) Civil Penalties. Any person found to have violated this Section may be sentenced to pay a fine of not less than three hundred dollars ($300) and to exceed five thousand dollars ($5000), or both.

1. The Tribal Court may also exclude the violator from the exterior boundaries, or any trust land, of the Pueblo of Pojoaque for duration to be determined by the Tribal Court.

2. If the violator is employed by the Pueblo or is a member of the Pueblo, the violator's eligibility for tribal enrollment and all tribal benefits, including any tribal disbursements, will be immediately terminated for a duration to be determined by the Tribal Court.

3. The violator may be responsible for paying drug testing and treatment costs.

4. When the parent is determined to be threat to the public health, safety, and welfare, under the provisions of this Section, for any child that is under the Children's Court's jurisdiction, the Children's Court may adjudicate the child to be and neglected child or a child in need of services for a duration to be determined by the Children's Court.

(g) Deferral and Rescission of Penalties.

1. The Tribal Court may defer penalties if the violator is willing to comply with court-imposed conditions, including participation in Path to Wellness Court, or similar intensive court-ordered supervision, substance-use disorder treatment, and drug testing. The Court may impose conditions recommended by Tribal Police, Family and Children Services, or other service provider.

2. The Tribal Court shall provide a written order to the person who is determined to be in violation of this Section. The order will set out the conditions under which any of the penalties imposed may be deferred or rescinded.

3. Tn the case of a neglected child education connected to a parent's violation of this Section, the parent has two (2) years in which to successfully comply with the Children's Court order, including completion of Path to Wellness Court. If the parent has not successfully complied with the Tribal Court order within two (2) years, termination of parental right should be initiated by Pueblo of Pojoaque Family and Children Services pursuant to the Children's Code. The two (2) years may be extended by the Tribal Court with a written justification for the extension.

Subpart K Domestic Relations

K-1 Marriage and Divorce

All marriages consummated according to State Law, Tribal custom or tradition, the Tribal Code, or the laws of another county shall conform to the provisions of this Code.

(a) Jurisdiction. The Tribal Court shall have the authority to solemnize or conduct marriages or grant divorces when either party is a member of the Pueblo of Pojoaque.

1. The Tribal Court shall also have jurisdiction to hear and determine separate maintenance, annulment, adoptions, determination of paternity and support, custody of minor children and change of name and to determine if full faith and credit or comity should be given to judgments of a Court or other jurisdictions in these domestic relations matters when an enrolled member of the Pueblo of Pojoaque is a party. Full faith and credit determinations must be made in accordance with Section J-7 of this Code. Payroll-related withholding orders arising from these domestic relations matters must be submitted to the Tribal Court and reviewed and approved for enforcement in accordance with Sections J-7 and J-9 prior to processing or enforcement.

(b) Marriages. A valid marriage hereunder shall be constituted of the following:

1. The issuance of a marriage license by the State of New Mexico or any other valid jurisdiction; and

2. The solemnizations of the marriage by Pueblo tradition and custom, or by a Judge within the jurisdiction of the Pueblo of Pojoaque or by a recognized clergyman or public official authorized to do so by the laws of any State or Country.

(c) Solemnization. In the event a judge, clergyman, Tribal judge or anyone authorized to do so solemnizes a marriage, the marriage license shall be filed with the State within thirty (30) days of the solemnization. The validity of any marriage under this Code is not affected by the absence of a ceremony.

(d) Invalid or Prohibited Marriages. Marriages which are prohibited or invalid under this Code are:

1. Where either party is lawfully married to another living spouse unless the former marriage has been legally annulled or dissolved.

2. Between ancestors and descendants of every degree, between a stepfather and stepdaughter or between stepmother and stepson, between brothers and sisters, aunts and nephews, uncles and nieces, and between first cousins, whether the relationship is of the half or whole blood, and, legitimate or illegitimate.

3. When marriages are prohibited by custom and traditions of the Pueblo.

4. All such marriages listed in this Section are invalid for the purpose of this Code.

(e) Grounds for Annulment or Voidable Marriage. A marriage may be voided or annulled by the Tribal Court for any one of the following reasons upon the application of one of the parties:

1. When either party to the marriage shall be incapable of consenting thereto.

2. When the consent was obtained by force or fraud.

3. When either party was at the time of the marriage incapable of consummating the marriage or the incapacity is continuing.

4. When the marriage was invalid on one of the grounds set forth in Paragraph (d).

5. If, after correction of any of the foregoing defects, the parties shall continue to live together as husband and wife, the marriage shall not subsequently be subject to annulment because of such defect.

6. Procedure for annulment must be instituted by petition of the party laboring under the disability or upon whom the force or fraud is imposed in a civil action.

(f) Effects of Annulment of Voidable Marriage. The legitimacy of children and their entitlement to enrollment conceived or born prior to a judgment of annulment shall not be affected by the judgment. The judgment shall be conclusive only as against the parties to the action and those claiming under them.

(g) Divorce. A marriage may be dissolved in the Tribal Court for incompatibility of the parties for whatever reason when either party is an enrolled member of the Pueblo of Pojoaque. The Court may require a waiting period of up to sixty (60) days before making any divorce final.

(h) Actions of the Court Pending Divorce or Annulment.

1. The Tribal Court may order:

A. The husband or wife to provide for the separate maintenance of his or her spouse and children as the Court may deem just upon application therefore or in the disposition of a divorce proceeding. Any payroll withholding required to enforce such maintenance must be submitted to the Tribal Court and reviewed and approved for enforcement prior to processing or enforcement, in accordance with Sections J-7 and J-9.

B. The care, custody, and maintenance of the minor children of the marriage during the pendency of the proceedings.

C. Any reasonable temporary property settlement for the use of real and personal properties, as between the parties, and the recovery and delivery to each of the parties of any of their personal property in possession or control of the other, for good and adequate reasons, and the use of any and all property, whether real or personal, and the payment of debts, all on a temporary basis until final adjudication by the Court.

D. To restore the maiden name of the wife, if requested.

K-2 Determination of Heirs

If an Indian shall die leaving property, other than an allotment or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the descendent shall bring suit in the Pueblo of Pojoaque Tribal Court to have that Court determine the heirs of the decedent and distribute the property.

K-3 Probate of Wills

If an Indian shall die leaving a will disposing of property, other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal Court shall determine the validity of the will.

K-4 Domestic Violence Ordinance

(a) Jurisdiction. The Pueblo of Pojoaque has criminal jurisdiction over any act of domestic violence that occurs within the exterior boundaries of the Pueblo that involves an Indian. The Tribal Court has civil jurisdiction over any act of domestic violence that occurs within the exterior boundaries of the Pueblo of Pojoaque owned land.

(b) Definitions. In addition to the definitions contained in Subpart A-3,

1. "Act of Domestic Violence" means physical harm, bodily injury, or assault; or, the infliction of fear that physical harm, bodily injury, or assault could occur momentarily; or, terroristic threats; or, criminal sexual conduct.

2. "Domestic Violence" means acts of violence committed by a current or former spouse or current or former partner of the victim, by a person with whom the victim shares a child in common, by a person or partner who is cohabitating with or has cohabitated with the victim as a spouse or partner, or by a person similarly situated to a spouse or partner of the victim, by persons involved in a significant romantic or sexual relationship, or by a person related to the victim by blood.

3. "Order of Protection" means a Tribal Court action. No fees shall be charged either when a Petition for an Order of Protection is filed with the Tribal Court, or when comity or full faith or credit is requested for any order of Protection issued by another court of competent jurisdiction. After a petition is filed, the petitioner's address shall be kept confidential by the Tribal Court, except for the purposes of notifying the petitioner of further court actions or for law enforcement purposes.

(c) Procedure for Order of Protection. Upon receipt of a written petition for an Order of Protection, or for comity or full faith and credit of another court's order, the Tribal Court shall either schedule an emergency ex parte hearing, if the respondent is not available, or a hearing with all parties present. The written petition shall include the allegations, a police report if available, and the address and phone number of the respondent.

(d) Hearings; Ex Parte Order; Mutual Orders of Protection.

1. If an ex parte Order of Protection is granted, the Court shall include in the Order either a date for a full hearing with all parties present or the opportunity for the respondent to be heard at a hearing with all parties present. If a full hearing is not scheduled by the Tribal Court, the Tribal Court shall schedule a full hearing after the respondent contacts the Tribal Court, in writing, of the desire for a full hearing.

2. All Orders of Protection shall include the precise conditions that the respondent must follow. The duration of the Order of Protection shall be determined solely by the Tribal Judge.

3. Mutual Orders of Protection and/or any provisions for restraining both parties shall only be issued if there are facts cited in the order that indicate that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. Both parties must file for an Order of Protection and/or request provisions for restraint before a Mutual Order of Protection and/or any provisions for restraint are issued.

(e) Penalties.

1. Civil Penalties for Not Following Orders of Protection. Any person not following the provisions in an Order of Protection shall be subject to a charge of civil violation of a Tribal Court Order of Protection. Fines may be levied up to five thousand dollars ($5,000) and restitution to the petitioner may be ordered.

2. Criminal Penalties for Not Following Orders of Protection. Any Indian not following the provisions in an Order of Protection shall be subject to a charge of criminal violation of a Tribal Court Order of Protection. Upon conviction, the violator may be imprisoned for not more than one year, fined up to five thousand dollars ($5,000), ordered to pay restitution to the petitioner, and to appear in Tribal Court.

(f) Procedures for Criminal Prosecution of an Act of Domestic Violence.

1. Arrest. Upon a finding of probable cause that an act of domestic violence has been committed by an Indian, the Pueblo of Pojoaque Tribal Police shall arrest the alleged violator.

2. Criminal Complaint. Upon the filing of a criminal complaint with the Tribal Court, the Judge may issue any necessary restraining order or Order of Protection as the Judge deems advisable to protect the alleged victim.

3. Criminal Procedure. The Tribal Police and Tribal Court shall follow the criminal procedure contained in the Tribal Law and Order Code for the arraignment and advisement of rights of any alleged violator of the Domestic Violence Ordinance.

4. Penalties. Any Indian violating the Domestic Violence Ordinance may be subject to fines of up to five thousand dollars ($5,000), restitution to any abused party, probation with conditions, parole with conditions, or imprisonment of up to one year, at the discretion of the Tribal Judge.

Subpart L The Children's Code (2022 Restatement)

L-1 Statement of Policy

(a) Children are sacred. They are the vehicle through which culture, language, ceremony, and traditional practices are passed to generations to come. Pueblo of Pojoaque children belong to the Pueblo and are entrusted to the care of their parents. Protecting our children and supporting the families that raise them is our highest priority. The Pueblo's custom has

been for the community to share responsibility for taking care of children and community members, by stepping forward when needed; and returning children to their parents when the crisis has passed.

(b) As an exercise of its inherent sovereignty, the Pueblo of Pojoaque Tribal Council has the authority to delegate to Tribal Court the authority to hear and decide child abuse and neglect cases using written and customary law.

(c) The Pueblo recognizes the rights of parents to raise their children, free from interference by the Tribal government, except in cases of abuse, neglect, or abandonment.

(d) The Pueblo of Pojoaque is responsible for protecting its children's safety, well-being, and welfare; preserving children's identity as members of the Pueblo of Pojoaque and extended family; and, supporting its children's sense of belonging and desire to learn about Pueblo of Pojoaque culture, religion, language, values, and relationships.

(e) If a child is put at risk, based on evidence of abuse, neglect, or abandonment, the Pueblo will take action to protect the child while maintaining the overall objective of reunifying the child with his or her parent(s).

L-2 Definitions

In this subpart, unless the context otherwise requires:

(a) "Abandonment": A parent has abandoned a child when the child is left alone or in the care of someone other than the other parent, without provision for support, and the parent has failed to return within a reasonable amount of time, considering the age of the child and the surrounding circumstances. Custody provided with family members through mutual consent to short-term placement does not constitute abandonment.

(b) "Act of delinquency": An act that if committed by an adult would be punishable as a criminal offense in the Pueblo of Pojoaque Law and Order Code.

(c) "Active Efforts": Energetic efforts that show an active attempt to resolve the problems or issues that led to removal of the child, or puts the child at risk for removal, from the family as soon as possible by arranging for the best-fitting services and helping families engage in those services, such as by providing transportation and helping make appointments.

(d) "Adjudication Hearing": Hearing held within 60 days after a petition alleging abuse or neglect is filed to determine whether the alleged abuse or neglect occurred, if denied by the parent.

(e) "Adoptee": The individual who is adopted or is to be adopted.

(f) "Adoption": The legal process, including a customary process, that gives a child a legally recognized, permanent parent-child relationship with a person other than the child's

biological parent and terminates or modifies the legal parent-child relationship between the child and the biological parents.

(g) "Aggravated Circumstances": Circumstances in which the parent(s), guardian, or custodian has:

1. Attempted, conspired to cause, or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

2. Attempted, conspired to cause, or caused great bodily harm or death to another parent, guardian or custodian of the child;

3. Attempted, conspired to subject, or has subjected the child to torture, chronic abuse, or sexual abuse; or

4. Had parental rights over a sibling of the child terminated involuntarily.

(h) "Best Interests of the Child": The deliberation that the Tribal Court undertakes when deciding what type of services, actions, and/or orders will best serve a child as well as who is best suited to take care of a child. Guiding principles include:

1. The health, safety, and/or protection of the child;

2. The importance of maintaining or encouraging the child's ties to the Pueblo of Pojoaque, family members, community, culture, and values;

3. The importance of family integrity and preference for avoiding removal of the child from his/her home and the care of his/her parent(s);

4. The importance of maintaining sibling and other close family bonds;

5. The importance of timely permanency decisions; and

6. The assurance that a child removed from his/her home will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult.

(i) "Best Interests of the Pueblo": are served when the children of the Pueblo are connected to the Pueblo and receive care and guidance through religion, culture, history, language, traditions, and values, which will prepare them to become contributing members of the Pueblo.

(j) "Caretaker": (1) a person who is required by tribal law or custom to provide services or resources to another person; or (2) who voluntarily undertakes to provide care or resources to another person; or (3) an institution or agency which voluntarily provides or is required by tribal law or custom, or other applicable law, to provide services or resources to a person, including, but not limited to, the duty to follow up on placements, and any such

institution or agency which receives anything of value in return for providing services or resources; or (4) an employee or agent of any institution or agency described in paragraph 3 above.

(k) "Case Management": the activity of a child welfare case worker in assessing client and family obstacles, case planning, coordinating and linking services for clients, monitoring service provisions and client milestones, advocacy, tracking, and evaluating services provided, and providing other direct services such as accountability of funds, data collection, and documenting activities in the case file.

(l) "Case Plan": a written plan with time-limited goals which is developed and signed by a client and a child welfare case worker. The case plan will include documentation of referral and disapproval of eligibility for other services.

(m) "Child": an individual under the age of eighteen (18) who has not been emancipated by order of a court with proper jurisdiction.

(n) "Child Abuse" – psychological or physical harm to the child or substantial risk of psychological or physical harm to the child by acts, or the failure to act, of a person responsible for the child's welfare. Child abuse may include:

1. Physical abuse: a child is dead or exhibits evidence of any injury or physical maltreatment, including but not limited to bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and the condition is not justifiably explained.

2. Sexual Abuse: any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

3. Verbal, psychological, or emotional abuse: Recurring verbal and/or non-verbal behavior of a person characterized by intimidating, ignoring, belittling, and/or otherwise damaging a child's sense of self-worth and emotional development. Witnessing violence/abusive behavior between adults or directed at other children impacts all children in the home and may be abuse.

(o) "Child in Need of Services" (CHINS)/ "family in need of services" (FINS):

1. The behavior of the parent, guardian, custodian, or other family member endangers the child's health, safety, education, or well-being;

2. The child's behavior endangers the child's health, safety, education, or well-being;

3. The child is absent from the child's place of residence for twenty-four hours or more without the consent of the parent, guardian, or custodian;

4. The parent, guardian, or custodian of a child refuses to permit the child to live with the parent, guardian, or custodian; or

5. The child refuses to live with his/her parent, guardian or custodian.

(p) "Child Neglect": Failure of parent(s) to provide adequate food, clothing, shelter, medical care, education, supervision, or emotional support to a child. Illegal drug use by the parent is presumed to be child neglect.

(q) "Child Welfare Specialist": Family and Children's Services employee with specialized training in ICWA and child welfare and FINS case management.

(r) "Court": Pueblo of Pojoaque Children's Court

(s) "Custodian": An adult with whom the child lives who is not a parent or guardian of the child. A person who exercises physical control, care, and custody of a child, including an employee of a residential facility.

(t) "Customary Adoption": Permanent custody alternative based on traditional tribal practice recognized by the community that gives a child a permanent parent-child relationship with someone other than the child's birth parent without requiring that the parental rights of the biological parent be terminated.

(u) "Emergency Placement": Limited instances when Family and Children's Services must place a child in the home of private individuals, including neighbors, friends, or relatives, as a result of sudden unavailability of the child's primary caretaker.

(v) "Extended Family": Any person related to the child by blood or marriage and having significant connection to the child and viewed as an extended family member in accordance with Pueblo of Pojoaque tradition and custom.

(w) "Family and Children's Services" (FCS): The Pueblo of Pojoaque child welfare agency responsible for ensuring the safety of children and families.

(x) "Family in Need of Services" (FINS): a family whose child is not alleged to be abused or neglected but needs services because, for example, the child is unreasonably absent from school or a runaway.

(y) "Family Services": Services that address specific needs of the child or family usually administered by department, including culturally appropriate services before to prevent removal.

(z) "Family Violence": Any act, or threatened act, of violence, including forceful detention, of a person that results in, or puts the victim in fear of, physical or mental injury and is committed by a parent, a child or grandchild, a current or former spouse, or current or former partner of the victim, by a person with whom the victim shares a child in common,

by a person or partner who is cohabitating with or has cohabitated with the victim as a spouse or partner, or by a person similarly situated to a spouse or partner of the victim, by persons involved in a significant romantic or sexual relationship, or by a person related to the victim by blood.

(aa) "Good Faith": Acting out of an honest belief or purpose and the lack of intent to do harm.

(bb) "Guardian": an adult other than a parent, appointed by the Tribal Court or other court of competent jurisdiction, to provide care and control of a minor as detailed by court order. May be temporary or permanent.

(cc) "Guardian ad Litem": court-appointed legal advocate for a child to represent the interests of the child in court.

(dd) "Kinship Care/Guardianship": care of the children by relatives or any other person deemed to be a relative by tribal law or custom.

(ee) "Legal Custody": the right and duty to the custody and care of minor as authorized by law, including the duty to protect, educate, nurture, discipline, and provide the child with food, clothing, shelter, medical care, and a supportive environment.

(ff) "Mediator/Peacekeeper": a person appointed by the Tribal Court to serve as an impartial third person to assist parties in conflict to resolve their conflict themselves.

(gg) "Modification of Parental Rights": legally limiting the parental rights of a parent to a child in the best interests of the child. This may include limitation on custody, visitation, information sharing, and participation in decision-making about the child's education, medical treatment, care, and control.

(hh) "Neglect": Abandonment; failure to provide proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian, or custodian or the failure or refusal of the parent, guardian, or custodian, when able to do so, to provide them; reckless failure of a parent, guardian, or custodian to protect a child from abuse.

(ii) "Parent": an individual who is legally recognized as a mother or father or a child, or whose consent is necessary for an adoption under this code. "Parent" does not include any person whose parental rights to the child have been terminated by court order.

(jj) "Parental Rights": The fundamental right of parents to conceive and raise their child; to make major decisions about the child's health, education, and religious upbringing; and to pass property to a child via gift or inheritance.

(kk) "Pueblo": the Pueblo of Pojoaque

(ll) "Permanent Legal Guardian": Person designated by the Tribal Court to have legal custody of the child when reunification is no longer the goal.

(mm) "Permanency Plan": A plan approved by the Court that includes the current goal for permanency. Permanency plans may include an alternate plan if the primary plan fails. A permanency plan is decisive, with time-limited, goal-oriented activities to maintain children within their families of origin or place them with other permanent families. Permanency plans include the child's goal for permanency, the tasks required to achieve the goal, and the roles and responsibilities of all involved. Permanency goals include reunification, adoption, customary adoption, permanent placement with a relative or legal guardian, other planned permanent living arrangement, or emancipation.

(nn) "Physical Custody": The care, custody, and supervision of a child where he or she lives.

(oo) "Relative": Parent, grandparent, great-grandparent, first cousin, aunt, uncle, niece, nephew, or any other person deemed to be a relative by tribal law or custom.

(pp) "Relinquishment": The voluntary giving up of parental rights by the legal parent(s), including for purposes of customary adoption.

(qq) "Reunification": The return of a child back to the care, custody, and supervision of his or her parent(s).

(rr) "Suspension of Parental Rights": The permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child.

(ss) "Temporary Caretaker": Emergency caretaker or foster parent when the expectation is that the child will be reunified with the parents.

(tt) "Termination of Parental Rights" (TPR): Legally ending the parental rights of a person to a child by court process. TPR does not end the rights of the child to tribal membership relationships recognized by custom and tradition.

L-3 Children's Court Established

(a) The Pueblo of Pojoaque Children's Court is hereby established. The primary function of Children's Court is to ensure the well-being of all children and families within the Pueblo of Pojoaque in accordance with the values, customs, and traditions of the Pueblo of Pojoaque.

(b) Children's Court cases include all cases where the interests of minor children are central, including Child Welfare, Juvenile Delinquency, Child or Family in Need of Services, Suspension or Termination of Parental Rights, and Adoption Proceedings.

(c) Children's Court Judges. Judges of the Pueblo of Pojoaque Children's Court will have the same qualifications, power, and duties as judges of the Pojoaque Tribal Court. All Children's Court judges will have specialized training in presiding over Child Welfare and Juvenile Delinquency cases by participating in at least 20 hours of training focused on child welfare per year.

(d) Children's Court decisions must be made on a case-by-case basis, with findings of fact and conclusions of law in a written order based on evidence presented to the Court.

L-4 Jurisdiction of the Pueblo of Pojoaque Children's Court

(a) Personal Jurisdiction. Children's Court has personal jurisdiction over all mandatory parties in Children's Court Cases, including:

1. Children:

   A. All children who reside within the exterior bounds of the Pueblo of Pojoaque.

   B. Children who are enrolled or eligible for enrollment in the Pueblo of Pojoaque.

   C. Children deemed members of the Pueblo of Pojoaque by tradition and custom.

   D. Children whose legal parent, custodian, or guardian is a member of the Pueblo of Pojoaque.

   E. Children over whom the Pueblo of Pojoaque has jurisdiction pursuant to the Indian Child Welfare Act.

   F. Children by the consent of the parties with custody/guardianship of the children and with permission of the Court.

   G. Children who commit an act of delinquency within the exterior boundaries of the Pueblo of Pojoaque.

2. Parents/custodians/guardians. Children's Court has jurisdiction over both parents and any caregivers to determine the best interests of the child and to decide other related matters.

3. Foster parents/temporary guardians. Children's Court has jurisdiction over any foster parents or temporary guardians of the child.

(b) Subject Matter Jurisdiction. Children's Court has the power to make decisions regarding:

1. Abuse and neglect, child- or family-in-need-of-services, termination of parental rights, adoption, guardianship, and juvenile delinquency;

2. Appointing any legal guardian or custodian or similar arrangements for the care, custody, protection, or best interests of a minor, whether or not arising from a proceeding under this Code;

3. Child custody proceedings transferred from state proceedings, pursuant to the Indian Child Welfare Act (ICWA).

4. Transferring cases to state court or other tribal court. In any proceeding before the Children's Court, the Court may transfer the proceedings to an appropriate state court or another tribal court when the Children's Court judge determines, after taking into account recommendations from Family and Children's Services, other agencies, parents, and guardians, that a state or other tribe has a significant interest in the well-being of the child and the transfer would be in the best interests of the child.

5. Transfer from other court. The Children's Court may accept or decline transfers of child welfare cases from federal, international, state, and tribal courts.

6. Juvenile Delinquency Matters. Where a child is accused of committing an offense under the Criminal Code, a judge of the Court may either:

   A. If the child is over sixteen (16) years old, proceed with the case as a regular criminal matter and treat the child as an adult when the interests of justice require; or

   B. Declare the proceeding a Children's Court matter and proceed as provided in this subsection.

(c) Jurisdiction over Extended Family and Other Involved Parties:

1. Where the Children's Court exercises jurisdiction over a child under this Code, the Court will also have civil jurisdiction over the child's family whenever the Court deems it appropriate.

2. The Children's Court will also have personal jurisdiction over any adult whose behavior causes or tends to cause the child to come within the jurisdiction of the Court. Such person will be provided notice and opportunity to be heard.

3. In any Children's Court proceeding, upon application of a party, or on the Court's own motion, the Court may enter an order restraining the conduct of any party over whom the Court has obtained jurisdiction if:

   A. the Court finds that the person's conduct is or may be detrimental or harmful to the child and will interfere with the Court's orders or any case plan; and

   B. the restrained party has notice of the order and an opportunity to be heard on any such order.

(d) Emergency Jurisdiction. Children's Court may exercise emergency jurisdiction if the child is present in the Pueblo and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse. An emergency order may remain in place until another jurisdiction, such as the child's tribe or the state, takes jurisdiction over the case.

(e) Continuing jurisdiction. Children's Court may exercise continuing jurisdiction in any Children's Court case to further the best interest of children and their extended families. Children's Court may cede or transfer jurisdiction to another forum in the best interests of the child.

(f) Concurrent jurisdiction. Nothing in this Code precludes Children's Court from exercising concurrent jurisdiction with another forum.

(g) Comity. The Court will exercise comity with regard to state, tribal, or other foreign child custody orders, where such orders are consistent with the public policy of the Pueblo, the intent of ICWA, due process, and the laws and customs of the Pueblo.

(h) Forum Selection Clause.

1. If the child is not a member of the Pueblo, except in an emergency, Children's Court will not act in cases where there is an open case about the same child or family issue in another jurisdiction.

2. If the child is a member, or eligible to be a member, of the Pueblo, Children's Court will determine whether taking jurisdiction is in the best interests of the child.

3. Upon learning a case is open concerning the same child in another jurisdiction, Children's Court will communicate with the other Court about the case. The Children's Court Judge will determine whether the case should be dismissed from Pojoaque Tribal Court because the other jurisdiction has an already-pending case about the same issue.

L-5 Children's Court Rules of Procedure - General

(a) Summons/Notice of Hearing. Family and Children's Services or another designated department will work with Pueblo of Pojoaque Tribal Police and Tribal Court to serve all pleadings, petitions, notices of hearing, orders, reports, etc. related to the case to all necessary parties.

1. Notice may be made pursuant to Pueblo of Pojoaque Law and Order Code § C-9 (Service of Process) and § G-11 (Service and Filing).

2. Service may be achieved through electronic service by email to the party's email of record with acknowledgment of receipt.

3. If service cannot be achieved pursuant to paragraphs 1 or 2 above, the Children's Court judge may make a finding that the party had actual notice of the proceeding made by direct communication with Family and Children's Services, Pueblo of Pojoaque Tribal Police, or Tribal Court with a sworn statement by the person who provided notice that the served party acknowledged the hearing time and date.

4. Notice to other relatives. Family and Children's Services will make reasonable efforts to notify all grandparents and other relatives, unless notice is not in the child's best interests.

(b) Confidential. All Children's Court hearings and files are confidential and closed to anyone not a party to the case or otherwise authorized to attend the hearing for view the file. Any person who intentionally and unlawfully releases any confidential information or records to any unauthorized person or releases or makes other unlawful use of records may be found in contempt of court and be fined up to $5,000

(c) Record. All Children's Court hearings will be recorded.

(d) Virtual or telephonic appearances are permitted unless otherwise directed by Children's Court.

(e) Evidence Standards. Except where specified in this Code, the rules of evidence for the Pojoaque Tribal Court in Section G-22 apply to the Pojoaque Children's Court.

(f) No Right to a Jury. Except in juvenile delinquency proceedings where incarceration is a possibility, there is no right to a jury trial in any proceeding before the Children's Court.

(g) Presence of Child. The Court may, on its own motion or the motion of any party, order that the child be present in Court or meet with the judge. The child will be present for any juvenile delinquency hearings unless the child's presence is waived by their attorney.

(h) Contempt of Court. The Pojoaque Children's Court has the power to find any person in contempt of court for failure to abide by lawful court orders. A Children's Court judge may issue a bench warrant upon finding a person in contempt of court.

(i) Rights of Parties.

1. The Pueblo—through Family and Children's Services or Pueblo of Pojoaque Tribal Police—must produce in Court all witnesses and evidence supporting petitions in child- or family- in need of services, abuse and neglect, termination of parental rights, adoption, and juvenile delinquency proceedings.

2. The accused will be given a copy of the child welfare petition or delinquency complaint as soon as possible but at the first hearing at the latest.

3. The accused have a right to timely notice of any proceedings and the opportunity to be heard in court.

4. The parent(s) and other parties, including the child in a delinquency proceeding, may be represented by counsel at their own expense.

5. Parties may present any relevant information. The Court will determine whether any proposed information is relevant to the hearing.

6. Parties may ask the Court to order witnesses to appear at hearings. Parties must provide sufficient witness contact information to the Court to allow service.

7. The parties may testify on their own behalf or remain silent.

8. The parties may confront and cross-examine witnesses brought by the Pueblo.

9. The parent/caregiver has the right to seek independent medical, psychological, or psychiatric evaluations of themselves or their child, at their own expense.

10. A parent/caregiver has the right to refuse services for treatment, counseling, parenting classes, etc. The Court may use the refusal as a negative factor when weighing what decisions to make in the case.

L-6 Duty to Report Child Abuse and Neglect

(a) Mandatory Reporters. The care of youth within the Pueblo is a family, community, and tribal responsibility. Any person who has reason to suspect that a child is or has been abused or neglected in any way must report the suspicions immediately to Pueblo of Pojoaque Tribal Police; other local law enforcement agency; Pojoaque Family and Children's Services; or the New Mexico Children, Youth, and Family Department (CYFD).

(b) Reports by Agency. Reports of child abuse or neglect may be made to an agency in person, by email, or by phone. Pueblo of Pojoaque Tribal Police or Family and Children's Services must create a written report within 24 hours after they receive a report. The report must include as much information as possible: (1) the child's information (name, age, tribe, address, parent/caregiver telephone); (2) a statement of the alleged facts, including date, time, location of the event(s), and witness statements; and (3) the reporter's information, unless anonymous.

(c) Confidential Reports. Child abuse or neglect reports are confidential. The name and identifying information of the person making the report will not be disclosed without the consent of the reporter or by Court order if disclosure is found necessary to ensure the safety and well-being of the child.

(d) Use of Confidential Reports. All reports of child abuse or neglect will be reviewed by Family and Children's Services and Pueblo of Pojoaque Tribal Police. After the initial review, the reports of abuse and neglect may be used by Pueblo of Pojoaque Tribal Police to investigate whether criminal charges are appropriate and/or by Family and Children's Services to initiate child welfare proceedings.

(e) Immunity. Anyone who reports child abuse or neglect in good faith is immune from civil liability and criminal prosecution.

(f) Sanction for Failure to Report. Any person who knowingly fails to report child abuse or neglect to law enforcement or a child welfare agency may be charged with a civil offense in Pueblo of Pojoaque Tribal Court and fined up to five thousand dollars ($5,000).

(g) Sanction for Bad Faith Reporting. Any person who reports child abuse or neglect in bad faith or fraudulently may be charged with a civil offense in Pueblo of Pojoaque Tribal Court and fined up to five thousand dollars ($5,000).

L-7 Child Abuse and Neglect Investigations/Interagency Cooperation

(a) Interagency Cooperation. The confidentiality requirements set forth in this Subpart do not prevent cooperation between Tribal Police, Family and Children's Services, and other agencies to investigate fully abuse and neglect reports. When there is a conflict between confidentiality and the need for communication between departments and other agencies, protection of the child is the primary consideration.

(b) Immediate referrals between Pueblo of Pojoaque Tribal Police and Family and Children's Services.

1. Pueblo of Pojoaque Tribal Police. In addition to conducting its own investigation, including any criminal investigation, on child abuse and neglect allegations, Pueblo of Pojoaque Tribal Police will immediately refer all child abuse or neglect reports or allegations to Family and Children's Services as soon as possible with the alleged facts and all known contact information for the reporter, parents, child, alleged perpetrator, and other family members. Pueblo of Pojoaque Tribal Police will provide a written report to Pojoaque Family and Children's Services within 24 hours.

2. Pueblo of Pojoaque Family and Children's Services. In addition to conducting its own non-criminal investigation on child abuse and neglect allegations, Pueblo of Pojoaque Family and Children's Services will immediately refer all child abuse or neglect reports or allegations to Pueblo of Pojoaque Tribal Police by providing the alleged facts and all known contact information for the reporter, parents, child, alleged perpetrator, and other family members. Family and Children's Services will provide a written report to Pueblo of Pojoaque Tribal Police within 24 hours of the reported abuse.

3. Report to other tribal and/or state agencies. If, after investigation and ensuring the child is safe, the reported child is determined to not be a member or eligible for membership

in the Pueblo of Pojoaque, Family and Children's Services will alert New Mexico's Children, Youth, and Family Department (CYFD) and/or the child's tribal Indian Child Welfare contact. Reporting to other agencies does not itself relieve Family and Children's Services and Tribal Police of their obligations in the case.

4. Investigating Reports of Child Abuse or Neglect.

   A. Immediate Investigation. When Pueblo of Pojoaque Tribal Police and/or Family and Children's Services receive a report of alleged abuse or neglect, the agencies will take immediate steps to investigate and protect the welfare of the alleged abused or neglected child, as well as the safety of any other child under the same care.

   B. Specialized Training. Pueblo of Pojoaque Tribal Police and Family and Children's Services will designate one or more child welfare specialists. These employees must have annual specialized training on child abuse and neglect investigation best practices.

   C. Pueblo of Pojoaque Tribal Police will work with a designated Family and Children's Services child welfare specialist. If a child welfare specialist is not available, Pueblo of Pojoaque Tribal Police and Family and Children's Services will act in the best interests of the child until a trained child welfare specialist is able to offer guidance.

   D. Forensic interviews. The Pueblo of Pojoaque Tribal Police will arrange for forensic interviews or child abuse medical exams. Family and Children's Services may ask Tribal Police to arrange for forensic interviewing with the appropriate agency.

   E. Written Report. Pueblo of Pojoaque Tribal Police Department is responsible for ensuring that a written child abuse or neglect incident report with sufficient detail is completed. The report should contain information about the child; the parent/guardian/custodian; the nature and extent of the child's injuries; any specific allegation; the location where the alleged incident occurred; any evidence or reports of previous child maltreatment; all children and/or adults residing in the child's home; information identifying the child's caretaker; any information regarding the alleged perpetrator; and all other information that might be helpful in establishing the cause of the injuries and the identity of the person(s) alleged to be responsible for the injuries.

5. Intervene to Prevent Removal. Family and Children's Services will make active efforts to prevent or eliminate the need for removing the child from the child's home. Active efforts may include family meetings, counseling, substance use disorder treatment and monitoring, or other strategies to ensure the child's safety.

6. Agency Policies and Procedures/Prioritization of Action Plan. Family and Children's Services and Pueblo of Pojoaque Tribal Police will cooperate to create standard

operating procedures, prioritization of action plans, memorandum of understanding, or other written documents to detail how child abuse and neglect cases will be handled. Any such document will be reviewed regularly to make changes to align with current best practices.

L-8 Taking a Child into Protective Custody

(a) Pueblo of Pojoaque Tribal Police and Family and Children's Services will work together to determine as quickly as possible, but no later than 24 hours after the initial abuse/neglect report, whether emergency removal of the child is necessary to protect the child from immediate danger of substantial harm or injury if not taken into custody.

(b) Both Pueblo of Pojoaque Tribal Police and Family and Children's Services have the authority to remove a child from the home when the child is in immediate danger of substantial harm or injury if not taken into custody. If there is a dispute between the agencies regarding removal, the agencies will work together in the child's best interests.

(c) If no Family and Children's staff member is available to respond to the scene, Pueblo of Pojoaque Tribal Police will notify Family and Children's Services immediately when a decision is made to take a child into custody.

(d) Removal without Court Order. Pueblo of Pojoaque Tribal Police or Family and Children's Services may remove a child to protect the child from immediate danger of substantial harm or injury without a court order.

(e) Emergency Custody Orders. Pueblo of Pojoaque Tribal Police or Family and Children's Services must notify the Children's Court Judge to request an emergency custody order as soon as possible, but will act without judicial permission if a judge is not available.

1. A judge may issue an emergency custody order upon a sworn oral or written statement of facts that provide probable cause that the child is in immediate danger of substantial harm or injury if not taken into custody.

2. An emergency ex-parte custody order will name the child to be taken into custody, name the agency authorized to take the child into custody, and specify the date that the order was issued.

3. Emergency ex-parte custody orders are valid for 72 hours, unless extended for good cause by the Court.

(e) Required language in First Order. The first order, including any ex-parte orders, issued by the Court for removal of a child must contain findings that continuation in the home is contrary to the welfare of the child.

(f) Parent/Guardian/Custodian Notification of Removal. Family and Children's Services will notify the parent, guardian, or custodian as soon as possible after the child is taken into

custody. Within 24 hours of removal, Family and Children's Services will provide the parents or guardian a written notice of the reason for the action.

(g) Emergency Placement. Family and Children's Services will attempt to place the child with a relative before turning to other available placement options pursuant to the Pueblo of Pojoaque Placement Preferences.

(h) Custody Petition. Family and Children's Services will file a petition to initiate proceedings whenever a child is removed from the home as soon as possible, but by the end of the next business day the Court is open, and within 72 hours at the latest. See § L-10 (Initiating Children's Court Proceedings).

(i) Criminal Complaint in addition to FCS Petition. If Pueblo of Pojoaque Tribal Police Department determines that there is probable cause that a criminal act has occurred within the Pueblo, Pueblo of Pojoaque Tribal Police may take any necessary action to begin a criminal case including arrest the alleged offender; request warrants; file a criminal complaint or summons against the alleged perpetrator in Tribal Court.

L-9 Placement Preferences

(a) The best interests of the child will always be taken into consideration when placing a child outside their home.

(b) A child should be placed as geographically close as possible to the parent(s) or legal custodian.

(c) Temporary caretakers should commit to actively supporting the child's ability to participate in cultural/traditional activities; to maintain a connection with the child's extended family, especially siblings and grandparents, if in the children's best interests; and to remain in the same school and activities during the placement period.

(d) Child placements require foster care licensing through Pojoaque Family and Children's Services.

1. Family and Children's Services may waive foster care licensing requirements for up to three months after placement.

2. If a placement is in the child's best interests and licensing is not possible or feasible after the three-month waiver period, the licensing requirement may be waived permanently with written approval from the Director of Family and Children's Services and a finding from Children's Court that allowing placement in an unlicensed home is in the child's best interests.

(j) The following order of priorities will guide all out-of-home placements:

1. Immediate relatives;

2. Extended family members;

3. A Pueblo of Pojoaque Tribal Member;

4. Native American family licensed foster home;

5. A non-Native American licensed foster home in the Pojoaque Valley area;

6. Placement in a facility or home in collaboration with the New Mexico Children Youth and Family Division (CYFD), including treatment foster care.

7. Depending on the child's mental health or delinquency needs, placement in a youth mental health treatment center, youth substance-use disorder residential treatment facility, youth home, youth shelter, etc., approved by Pojoaque Family and Children's Services and Pojoaque Children's Court.

L-10 Initiating Children's Court Proceedings

(a) All Children's Court cases begin with Pueblo of Pojoaque Tribal Police or Family and Children's Services filing a Petition in Tribal Court.

1. Child welfare, child abuse or neglect, child in need of services, educational neglect, and/or family in need of services proceedings are initiated when Family and Children's Services files a petition in Tribal Court.

2. Pueblo of Pojoaque Tribal Police or Tribal Prosecutor may file juvenile delinquency complaints.

3. Tribal Police may file an emergency child welfare, child abuse or neglect, or child in need of services petition if no Family and Children's Services caseworkers are available to file an emergency petition.

4. Criminal charges related to child welfare and juvenile delinquency cases begin with Tribal Police or the Tribal Prosecutor filing a criminal or delinquency complaint detailing charges and statement of probable cause in Tribal Court.

(b) If, after investigation of a report of alleged child abuse or neglect, Pueblo of Pojoaque Tribal Police determines that the child is not in immediate danger of substantial harm or injury if not placed outside the home, Family and Children's Services will review all related reports to determine if a petitioner for a child in need of services (CHINS) or family in need of services (FINS) should be filed.

(c) Necessary information. Petitions do not have to be in any particular form but should contain as much of the following information as possible:

1. Facts showing that Children's Court has jurisdiction, such as the child is enrolled or eligible for enrollment in the Pueblo or resides on the Pueblo;

2. Sufficient alleged facts to allow the judge to determine that the child is in immediate danger of substantial harm or injury if not placed outside the home or that the child or family is in need of court-ordered services;

3. Contact information for the child and both parents, including any tribal affiliations, addresses, phone numbers, email addresses, birthdates;

4. Contact information for any temporary caretakers;

5. Any relevant prior history or related cases involving the child or other children in the family or any domestic violence cases or criminal history of the parents or guardians;

6. Any steps taken by Family and Children's Services to provide services; to prevent or avoid removal; or to make it possible for the child to return home;

7. A sworn statement under penalty of perjury that the signer has knowledge of the facts alleged in the petition and believes them to be true.

(d) Time for filing. If a child is removed from the home, Family and Children's Services must file a petition for an emergency order with Tribal Court as soon as possible but at the latest, on the next day that Tribal Court is open. If there is an extended break, such as for a holiday weekend, or an emergency need, the Chief Judge or designee should be contacted via his or her work phone and e-mail.

(e) Petition for Ex-Parte Order. If a parent or other necessary party is not available for an emergency hearing, an affidavit for an ex-parte custody order may be filed by Family and Children's Services or Tribal Police.

(f) Children's Court will schedule a hearing as soon as possible after a Petition is filed or ex-parte order is issued, to allow sufficient notice to the parents and other necessary parties. The Tribal Court, in its discretion, may convene emergency and ex-parte hearings with or without a written request when there is good cause to believe that an emergency hearing is in the best interests of the child.

(g) Failure to file on time. If a child is removed from the home and the petition for custody is not filed on time, the child must be returned to the parent or custodian.

(h) Amended Petitions. Because investigations routinely continue beyond the date of the initial filing, the petition may be amended to include newly discovered evidence or information. A copy of the amended petition must be provided to all parties at the time of filing.

(i) Electronic Filing. Petitions for emergency orders may be filed electronically by emailing the Children's Court Judge and/or Court Clerk.

L-11 Children's Court First Hearing

(a) Time limit. After an ex-parte order is issued or a petition or a juvenile delinquency complaint is filed, Children's Court will issue any emergency orders it deems necessary (e.g. out-of-home custody, stay-away, order of protection) and schedule a hearing to bring all interested parties into court as soon as possible.

(b) If a child is removed from the home, the first hearing will be no later than 72 hours after the Petition is filed by Family and Children's Services or Pueblo of Pojoaque Tribal Police, unless good cause is shown in a written motion to delay the hearing.

(c) The parent(s), guardians, or custodians of the child must be given notice of the time and place of all hearings. If the child's parent, guardian, or custodian is not present at the First Hearing, the Court will determine what efforts Family and Children's Services made to give notice and to get the parent, guardian, or custodian to attend the hearing. If a short delay will allow the attendance of the parent, guardian, or custodian, the Court will recess proceedings for a reasonable time, but no longer than the end of the same days' court hours.

(d) Evidence. At the First Hearing, the Court may look to the Federal Rules of Evidence to determine what weight to give the information presented. Information that may be inadmissible in other proceedings may be considered at this hearing.

(e) Presence of Counsel. Children's Court will not continue a First Hearing solely to allow a party to obtain representation.

(f) Purpose of First Hearing. The Court must make the following determinations based on information presented at the first hearing:

1. the Court has jurisdiction to hear the matter;

2. whether there is probable cause to believe the child is in immediate danger of substantial harm or injury if returned to, or left in the care of, the parent, guardian, or custodian;

3. whether any continued out-of-home placement is necessary; and

4. whether Family and Children's Services made reasonable efforts to prevent removal or reasons why reasonable efforts were not possible.

(g) Findings for an out-of-home placement. If the Court determines that an out-of-home placement should continue pending further proceedings, the Court must find there is probable cause to believe:

1. the child is in immediate danger of substantial harm or injury if not placed outside the home;

2. someone present in the home presents an immediate danger of substantial harm or injury to the child, including the child witnessing domestic violence;

3. no parent, guardian, or custodian is able, willing, or available to provide adequate supervision and care of the child;

4. the child will run away or cause serious damage to persons or property if returned to the parent, guardian, or custodian;

5. the child requires medical care, treatment, or evaluation or other services that he or she will not receive if returned to the parent, guardian, or custodian; or

6. the child has been abandoned.

(h) Services Ordered. The Court will order any services—which may include counseling for the child and/or parent/guardian/custodian, psychological evaluations, parenting classes, domestic violence intervention, substance-use disorder assessment and treatment through Pojoaque Behavioral Health or similar agency—necessary to ensure the child's health and safety and to provide active efforts toward reunification. Unless good cause is shown otherwise, the Court will order that the child be enrolled in the Pueblo of Pojoaque Early Childhood Education Center or the Pojoaque Boys and Girls Club or similar programs.

(i) When the home of an adult relative of the child is safe and adequate and placement in the home would be in the best interests of the child, the Pueblo will give preference to placement of the child in that home. Family and Children's Services will conduct home studies on appropriate relatives who express an interest in providing placement for the child.

(j) Child Returned to Custody of Parent, Guardian, or Custodian with Conditions. If the Court determines that the child is not in immediate danger of substantial harm or injury if returned to the home, it may find that the child or family is in need of court-ordered services and retain jurisdiction to ensure the child's health and safety. The Court may order:

1. the child returned to the parent, guardian, or custodian with the requirement to work with Family and Children's Services on a case plan and/or pending further proceedings;

2. that any person who poses a threat to the child be restrained from contacting or approaching the child, whether the child is returned to his or her home or in an out-of-home placement;

3. that the child, if age appropriate, and the parent, guardian, or other custodian attend mediation, peacekeeping, family meetings, or similar meetings as ordered by the Court;

4. that the parent, guardian, or custodian complete Pojoaque's Path to Wellness Treatment Court as part of any case plan; or

5. any other orders for services or actions necessary for the protection and well-being of the child, including ordering the child and/or parent, guardian, or custodian, to undergo assessments, counseling through Pojoaque Behavioral Health or similar agency, residential treatment, mandatory school attendance for the child, parenting time/visitation orders, and any other service or activity for the benefit of the child and family, with reunification or placement conditional on participation in services and achieving milestones.

(k) Return of Child. If the facts alleged are not sufficient to allow the Court to determine that the child is in immediate danger of substantial harm or injury if not placed outside the home, the child must be returned to the custody of the parent(s) or caregiver.

L-12 Guardian ad Litem/Youth Attorney

(a) The Children's Court judge may appoint a guardian ad litem (GAL) for minors under 14 years old. For minors 14 and older and in any juvenile delinquency proceeding, the Court may appoint a youth attorney.

(b) Anyone appointed to be a GAL or youth attorney will be an attorney eligible for admission to the Pueblo of Pojoaque Bar and have sufficient training and experience in child welfare cases, as determined by the appointing Children's Court judge.

(c) A guardian ad litem shall zealously represent the child's best interests in the proceeding for which the guardian ad litem has been appointed. Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall:

1. meet with and interview the child prior to custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of the Children's Code;

2. convey the child's declared position to the court at every hearing;

3. communicate with health care, mental health care, and other professionals involved with the child's case;

4. review medical and psychological reports relating to the child and the respondents;

5. contact the child prior to any proposed change in the child's placement;

6. contact the child after changes in the child's placement;

7. attend staffings or other administrative reviews concerning the child, including child protective team meetings, and include an assessment of any permanency and treatment plans;

8. report to the Court on the child's adjustment to placement and family time; compliance with prior court orders and treatment plans; and

9. represent and protect the cultural needs of the child.

(d) The youth attorney's role is to zealously advocate for the child's expressed wishes and needs. The youth attorney shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct.

L-13 Active Efforts/Case Plan/Staffings

(a) The parent(s), guardian, or custodian and Family and Children's Services will meet as soon as possible before or after the first hearing to develop a written reunification/treatment plan that will serve the child's best interests.

(b) The written reunification/treatment plan will be filed with Tribal Court within 7 calendar days after the First Hearing or after the Petition is filed if no hearing is held within 7 calendar days.

(c) Family and Children's Services must make active efforts to preserve and reunify the family, with the primary focus on the child's safety.

(d) Active efforts mean that Family and Children's Services will help the parents, guardian, or custodian access services, including, but not limited to, help with identifying services, enrolling in health insurance and other public benefits, setting up appointments, and ensuring transportation to services.

(e) Case Staffing. Family and Children's Services and/or Pueblo of Pojoaque Tribal Police may invite necessary professionals and interested parties to attend child welfare case staffings without violating confidentiality requirements.

1. Other necessary participants include:

   A. employees of the Pojoaque Behavioral Health Department whose professional duties are relevant to the case;

   B. the child's guardian ad litem or youth attorney; and

   C. other employees or child welfare service providers whose presence is deemed necessary by the child welfare specialist or Pueblo of Pojoaque Tribal Police officer assigned to the case.

2. Everyone who attends a family case staffing must sign a confidentiality form agreeing that any information learned through a case staffing will remain confidential. The

confidentiality agreement will also contain a consent to jurisdiction that allows Pojoaque Children's Court to impose contempt sanctions for violating confidentiality.

3. Parent or Caretaker Attendance at Case Staffings. A parent, guardian, or custodian may attend a case staffing, if the Pojoaque child welfare specialist or Pueblo of Pojoaque Tribal Police officer assigned to the case agree that it is in the child's best interests. The child welfare specialist has the authority to determine how much involvement the parent, guardian, or custodian may have in a case staffing. Parents who attend case staffings are not subject to confidentiality requirements.

L-14 Out of Home Placement Status Hearings and Updates

(a) At the end of the first hearing, if the child remains out of the home, Children's Court will schedule a review hearing for no later than 30 days after the first hearing.

(b) Within 30 days after the initial petition is filed, Family and Children's Services will provide a written status report to Children's Court and the parents, guardian, or custodian at least the day before the day of the status hearing.

(c) The purpose of the status hearing is to review parental progress with case plan milestones and determine whether the child can be safely returned to the care of the parent, guardian, or custodian.

L-15 Adjudication/Fact Finding Hearing

(a) If a parent, guardian, or custodian disputes that the alleged abuse or neglect occurred, Children's Court will schedule a trial where the accused and the Pueblo may present evidence on the alleged abuse or neglect.

(b) The adjudication hearing must be held within 60 days after the first abuse/neglect hearing.

(c) All necessary parties will receive adequate notice as described above in § L-5(a).

(d) At least the day before the adjudicatory hearing, the parent(s) or caregivers, Family and Children's Services, Pueblo of Pojoaque Tribal Police, and any other necessary party will meet to determine if an agreement can be reached.

(e) At the time of the adjudication hearing, the Court will ask whether the allegations in the petition are admitted or denied.

(f) If an agreement has been reached, the parties will inform the judge, who will issue any orders based on the agreement, including ongoing services.

(g) If the allegations are denied and no agreement reached, the Court will hear evidence about the allegation(s).

(h) Standard of Proof. The Pueblo must prove the allegation(s) by clear and convincing evidence that is reliable, material, and relevant.

(i) The parent(s), guardian, or custodian may present any evidence on their own behalf and have the rights described in § L-5(i).

(j) Evidence. The evidence standards in § L-5(e) apply in the adjudication hearing.

(k) To ensure that the Court has as much information as possible to determine the child's best interests, the Court may question any witnesses or request relevant information from Pueblo of Pojoaque Tribal Police, Family and Children's Services, or any other agency.

(l) If the Court finds, based on evidence presented, that child was abused or neglected, the Court will enter the finding as an order, including any services for the child and parent/caregiver.

(m) A finding that the allegations are true does not preclude returning the child to the home if there is no longer an immediate danger of substantial harm or injury if the child is returned to the home.

(n) If there is a finding of abuse or neglect, a review hearing will be scheduled for no less than 60 days after the adjudication hearing.

(o) If the Court does not find that the child was abused or neglected, the Court will dismiss the allegations. The Court may order that the child or family is in need of services and order any services necessary to ensure the health and safety of the child.

L-16 Order after an Adjudication of Abuse or Neglect

(a) The Court must issue a written order on disposition of the case within 5 days after the adjudication hearing. In the Order after the Adjudication Hearing, the Court will:

1. If a child was found to be abused or neglected and the Court permits the child to return to the home, place conditions and limitations on that placement;

    a. The Court may order the parents, guardian, or custodian (each, a "caregiver") to cooperate with any treatment plan and services;

    b. The Court may order the caregiver to ensure the child receives recommended services

2. Make findings regarding any placement of the child outside the home, including the child's adjustment to the home;

3. Provide for reasonable parenting time between the child and the parent, unless it is not in the child's best interests;

4. Describe the permanency plan (e.g. reunification, kinship guardianship, customary adoption).

5. The Order will detail:

   A. Whether Family and Children's Services has used active efforts to prevent the child from being removed from the home;

   B. Whether active efforts were used to reunify the child with the parent(s);

   C. Whether active efforts were used to keep siblings together, if applicable;

   D. The Court may determine that active efforts are not required to be made when the Court finds that the efforts would be futile; or the parent, guardian, or custodian has subjected the child to aggravated circumstances.

   E. If the Court finds that the child was neglected or abused, the Court will order the parent(s) to pay reasonable costs of support and maintenance, taking into account income. The parent(s) may be ordered to reimburse the Pueblo for any necessary payments the Pueblo pays to foster parents.

(b) Family Plan. Within three days after the adjudication, Family and Children's Services will meet with the family and prepare a written family plan with input from the affected family members.

1. The Family Plan will include recommendations for what steps need to be achieved to reunite the family or complete Family and Children's Services oversight.

2. The plan should include a treatment plan that details steps to ensure that the child's physical, medical, psychological, and educational needs are met and lists any services to be provided to the child and the parents to help with reunification.

3. Wellness Court. The case plan may include that the parent, guardian, or custodian must complete Pojoaque's Wellness Treatment Court, if eligible.

4. Unless good cause is shown otherwise, the Court will order that the child be enrolled in the Pueblo of Pojoaque Early Childhood Education Center or the Pojoaque Boys and Girls Club or similar programs.

5. If Family and Children's Services does not believe that reunification is possible, it will provide details of an alternative permanency plan for the Court's approval.

6. Family and Children's Services may also provide a plan that provides for reunification and a concurrent plan for an alternative permanent placement if reunification does not work out.

L-17 Permanency Review/Status Conferences.

(a) A review hearing will be held within 60 days of the adjudication hearing or sooner on the Court's own motion or motion of any party.

(b) After the first review hearing until permanency is achieved, the Court will hold a permanency review/status conference at least every three months to determine progress and compliance with the case plan. The Court, on its own motion or the motion of any party, may schedule review hearings more frequently.

(c) Family and Children's Services will monitor whether and how much the parent, guardian, or custodian is making progress on agreements, case plans, and/or court ordered services.

(d) Family and Children's Services Report. At least a day before each review hearing, Family and Children's Services must file a written report to include information about any progress or lack of progress since the previous hearing. The report will include any recommended changes to the case plan and/or permanency plan.

(e) After hearing from all parties and reviewing all documents, the Court will order a permanency plan, which may include concurrent permanency plans. This permanency plan will be in place at least until the next hearing, and may include:

1. reunification;

2. adoption after a motion has been filed to suspend or terminate parental rights;

3. placement with a person who will be the child's permanent legal guardian;

4. placement in the legal custody of Pojoaque Family and Children's Services with the child placed in the home of a fit and willing relative; or

5. Placement in the legal custody of FCS under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans are in the child's best interests.

(f) If reunification is not possible or parents fail to make progress toward reunification, Family and Children's Services will petition Children's Court for permanent suspension or termination of parental rights pursuant to §L-18.

L-18 Juvenile Delinquency Proceedings

(a) General Procedure.

1. Tribal Police will file all juvenile delinquency complaints based on charges that would be criminal in subsection M if committed by an adult.

2. Family and Children's Services will be notified as soon as possible after a delinquency complaint is filed.

3. The minor child has the right to have at least one parent or guardian present for all juvenile proceedings.

4. The juvenile defendant will have all the rights afforded to adult criminal defendants.

5. At the first hearing, the Court will determine whether there is probable cause to proceed with the juvenile delinquency charge(s).

6. The minor may proceed to a bench or jury trial on the charges if the Pueblo does not agree to declare the alleged delinquent a child in need of services.

(b) Informal proceedings

1. The Court, on its own motion and at any time, may dismiss the complaint or petition and/or declare the minor a child in need of services if it feels that court adjudication is unnecessary or unwarranted under the circumstances.

2. The Court may order any appropriate services for the minor.

(c) Order of Adjudication/Probation

1. An order of disposition or other adjudication in juvenile proceedings shall not be deemed a conviction for a crime. The disposition of a child and evidence given in any juvenile proceeding shall not be admissible against the child in any case or proceeding in any other court, whether before or after they has reached majority.
2. An order of probation or information supervision will remain in effect for as long as the Court deems necessary.
3. When the minor reaches eights year, all Children's Court orders will no longer be in effect.

(d) Probation Revocation

1. A minor who violates any terms imposed by the Court may be required to appear for a violation hearing.

2. The Pueblo must show by clear and convincing evidence that a term of the minor's probation conditions was violated.

3. If the minor is found to have violated a condition of probation, the Court may extend the period of probation or require any other services or incarceration based on the violation.

L-19 Confidentiality and Destruction of Records.

(a) The records of proceedings in Children's Court matters shall be kept separate from other Court records and shall not be open to anyone other than the parties to the proceeding, the Court, or other persons authorized by Court order.

(b) No part of the record shall be published or made public in any manner.

(c) When a child who has been in a Children's Court proceeding attains the age of eighteen (18) years, the Tribal Court shall order the Court Clerk to completely destroy all records of such proceedings involving such child.

L-20 Permanent Suspension or Termination of Parental Rights.

(a) General Considerations.

1. When deciding whether to permanently suspend or terminate parental rights, the Court must give primary consideration to the physical, mental and emotional welfare, and needs of the child, including the likelihood of the child being adopted if parental rights are terminated or permanently suspended; preservation of the child's identity as a tribal member and member of the extended family; providing the child with knowledge of and experience of his or her customs, traditions, culture, religion, language, values, history, and way of life.

2. When there is overwhelming evidence that a child has been physically abused or neglected and there is little chance that the conditions or causes of the abuse or neglect are likely to change in the foreseeable future, or when the effects of the physical abuse or neglect are serious, Children's Court shall consider terminating or permanently suspending parental rights and allowing adoption if it is in the best interests of the child.

3. The Pueblo of Pojoaque recognizes that the effects of termination or permanent suspension of parental rights have profound consequences for the parent and the child. To ensure a fair process, to protect the best interests of the child, and to guard parental rights, Children's Court will follow all procedures contained in this code.

4. A parent whose rights have been terminated or suspended is not legally entitled to any of the child's income, disbursements, or other benefits and may not inherit from the child.

(b) Termination of Parental Rights or Permanent Suspension of Parental Rights.

(a) Children's Court may order termination or suspension of parental rights only after a trial is held specifically on the question of terminating or suspending the rights of the parent(s), unless the trial is knowingly, intelligently, and voluntarily waived by the parent.

(b) An action to permanently suspend or terminate parental rights begins when an interested party files a petition in the Court. A petition may be filed by:

A. one or both parents who voluntarily request that their parent-child relationship be permanently suspended or terminated;

B. one parent requesting that the parent-child relationship between the child and the other parent be suspended or terminated;

C. Pueblo of Pojoaque Family and Children's Services; or

D. a Guardian, Custodian, or any other person having legitimate interest in the child.

(c) There is a presumption of a parent's ability to parent unless proven otherwise.

(d) Burden of Proof. The Court may not permanently suspend or terminate parental rights unless (1) the grounds for termination or suspension is proven beyond a reasonable doubt, and (2) there is no other option that is in the child's and the Pueblo's best interest.

(e) All evidence admissible under the Federal Rules of Evidence or as otherwise specified in the Pueblo of Pojoaque Law and Order Code is admissible. The competency of witnesses to testify will be similarly determined. The Court may admit otherwise inadmissible evidence if the interests of justice require or based on established custom and tradition.

(f) Permanent Suspension Preferred. The Court may not terminate parental rights unless permanent suspension of parental rights is not in the child's best interests and termination is the only option.

(g) Enrollment unaffected. Permanent suspension or termination of parental rights will not affect the child's enrollment status or rights as a Pueblo of Pojoaque Tribal Member.

(h) If the Court terminates or suspend parental rights, it must appoint a custodian for the child.

(i) A judgment of the Court terminating or suspending parental rights divests the parent of all legal rights. Termination of parental rights does not affect the child's right of inheritance through the former parent or the child's right to be a member of the Pueblo of Pojoaque.

(c) Voluntary Relinquishment of Parental Rights.

1. General Considerations.

   A. With permission of the Court, a parent may relinquish any legal connection they have with a child by petitioning the Court.

   B. Except when it is in the best interest of the child, a parent may not relinquish their legal parental rights unless another adult with a strong parental bond with the child, including a step-parent, is willing and able to adopt the child.

   C. Voluntary relinquishment will not be permitted to avoid financial responsibility for the child.

2. Procedure for Voluntary Relinquishment of Parental Rights.

   A. A parent must petition the Court, in writing, to relinquish parental rights. Family and Children's Services may assist in preparing the petition for voluntary relinquishment.

   B. The writing does not have to be filed in any particular form but must be in writing and contain:

      i. a statement about why the parent wants to relinquish parental rights;

      ii. a specific list of facts supporting the request for relinquishment of parental rights, provided that permanent suspension or termination of parental rights will not be granted if the request is made to avoid child support obligations;

      iii. complete name and contact information for the other legal parent and any guardian or custodian;

      iv. the child's full name, date of birth, place of birth and enrollment status;

      v. a written statement that the parent understands that relinquishing parental rights means that, if the petition is granted, the parent will have no legal rights or responsibilities regarding the child;

      vi. a statement that the parent was individually counseled by a qualified clinician that about the possible psychological effects on both the parent and the child of relinquishing parental rights; and

      vii. a confirmation that everything in the petition is true under the penalty of perjury.

C. Before the date of the relinquishment hearing, the relinquishing parent must obtain and file in Tribal Court a written report by a qualified psychologist or psychiatrist showing that the parent was counseled about the possible psychological effects on both the parent and the child of relinquishing parental rights. The petitioner is responsible for paying for the report.

D. A copy of the relinquishment petition will be provided to Family and Children's Services.

E. Family and Children's Services will receive notice of all relinquishment proceedings.

F. Upon filing of the Petition, the Court will schedule a hearing on whether relinquishment is in the best interests of the child.

G. Notice of the hearing will be served on the natural or legal parents, if known, and any current guardian/caretaker of the child.

3. Voluntary Relinquishment Hearing.

A. The parent wishing to relinquish must be informed by the Court on the record and the Court must be satisfied that the parent understands that if the petition is granted:

i. the parent will have no legal rights or responsibilities to the child;

ii. the parent will not be notified, or have any participation, in future adoption proceedings; and

iii. the Court may order, or the guardian or adoptive parent may decide that the child will have no contact with the former parent.

B. Before relinquishment is granted, the Court must find:

i. that the parent understands that relinquishing parental rights means that the parent will have no legal rights or responsibilities to the child, including no rights for visitation for themselves or their families, unless agreed by the guardian or custodian;

ii. that the parent's request to terminate parental rights is voluntary: it is not coerced, unduly influenced, or an involuntary act considering all the circumstances; and

iii. that the permanent suspension or termination is in the best interests of the child, provided that petitions filed by a biological parent to evade child support obligations are *prima facie* not in the child's best interests.

C. The parent who is relinquishing their parental rights will sign an acknowledgment under oath that he or she understands that she is giving up all legal rights to the child; that all questions were answered; and that the parent is freely consenting to relinquishing all legal rights and duties to the child.

D. If the Tribal Court determines that permanent suspension or termination of parental rights is in the child's best interests, the Court will issue a written order terminating the parent-child relationship. This is a final order for purposes of appeal.

E. After the Tribal Court enters the relinquishment order, the former parent(s) are not entitled to notice of legal proceeding concerning the child, including adoption. The former parents have no right to object to the adoption or placement of the child.

F. A biological parent whose rights have been terminated or suspended may not inherit from the child.

G. The rights of one parent may be terminated or permanently suspended without affecting the rights of the other parent.

(d) Involuntary Permanent Suspension or Termination of Parental Rights.

(a) General Considerations.

A. The Pueblo of Pojoaque—through Family and Children's Services—may act on behalf of the child to request, in writing, that the Tribal Court terminate or permanently suspend the parental rights regarding a child.

B. A termination of parental rights proceeding may go forward only after active efforts as described in Pueblo of Pojoaque Law and Order Code § L-13 have failed to reunite the family. In rare cases, such as when abuse, neglect, or abandonment is so severe that reunification will never be in the child's best interests, the Pueblo may allege that any efforts toward reunification would be futile.

C. Termination or Permanent Suspension of Parental Rights will generally not be granted unless an adoptive placement has been identified, unless there are special circumstances that must be detailed in the Petition for Termination.

D. In deciding whether the conduct or condition of the parent is unlikely to change within a reasonable time, the Court must find that continuation of the parent-child relationship will, more likely than not, result in continued abuse or neglect, or that the conduct or condition of the parent renders the parent or parents unfit, unable, or unwilling to give the child adequate parental care.

(b) Grounds for Involuntary Suspension or Termination of Parental Rights.

A. Abandonment of the Child. When either parent has left the child without provisions or support for more than thirty (30) consecutive days, and the following conditions exist:

i. the custodial parent or Family and Children's Services has given written notice to the Tribal Court of the abandonment, and

ii. after a Court hearing, the parent who has abandoned the child has not followed a court order and case plan that outlines the steps to remedy the abandonment.

B. When child has been placed in the care of others, including care by other relatives, either by a court order or otherwise, and the following conditions exist:

i. the child has lived in the home of others for an extended period of time;

ii. the parent-child relationship has disintegrated;

iii. a psychological parent-child relationship has developed between the substitute family and the child;

iv. if the Court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent;

v. the substitute family desires to adopt the child; and

vi. a presumption of abandonment created by the conditions described in subparagraphs (i) through (v) of this paragraph has not been rebutted.

C. Severe neglect. Neglect is considered severe when a court action has adjudicated that the child was abused or neglected and the conditions and causes of the abuse or neglect are unlikely to change.

D. Parental abuse. When a parent has caused great bodily harm to the child or their siblings, or the other parent has encouraged or neglected evidence of incest between the siblings, or attempted to sexually abuse the child or torture the child.

(c) Initiating Involuntary Termination or Suspension of Parental Rights.

A. Petition.

i. A Petition to Permanently Suspend or Terminate Parental Rights may be filed by Family and Children's Services or a representative of the Pueblo.

ii. Diligent efforts must be made to serve the Petition to Terminate and Notice of Hearing on all interested parties, particularly the parents.

B. Contents of Petition.

i. the name, birthday, gender, and residence of the child;

ii. the names, addresses, phone numbers, and any other contact information (email address) of the parents;

iii. the names, addresses, phone numbers, and any other contact information (email address) of the child's guardian, custodian, or caretaker;

iv. the specific grounds for involuntary suspension or termination of parental rights, supported by medical, psychiatric, child protection worker, family member, and/or psychological reports or testimony;

v. a statement detailing how the suspension or termination will lead to a permanent relationship for the child in adoption, customary adoption, or permanent guardianship that is in accordance with tribal preferences, and how connections will be maintained and enhanced with extended family and with the Pueblo's culture and tradition;

C. The Pueblo prefers permanent suspension of parental rights, but if termination of parental rights is sought, a detailed statement must be submitted to the Children's Court regarding why it is in the best interests of the child and the tribe, that the parental rights be terminated as opposed to suspended, and why the suspension of parental rights is not a better option for the child and the tribe.

D. Notice. The agency filing a Petition is responsible for providing a copy of the Petition and Notice of Hearing to necessary parties pursuant to PPLOC § G-11 (Service and Filing). The Tribal Court may assist with service if contact information is provided to the Court. Proof of service for each necessary party will be made part of the Court file. The following parties are to be notified:

i. the petitioner;

ii. The child's tribe, if other than the Pueblo;

iii. the child's biological parent(s);

iv. foster parents, guardian(s), custodian, extended family members; caretaker, if any; and

v. appropriate tribal and other agencies that may have an interest in the proceedings or may be of assistance to the Court.

E. Notice by publication. If the agency filing the Petition is unable to locate the parents, and with permission of the Court, service may be achieved by publication per § G-11(c)(3) (weekly publication in local paper for four weeks). An affidavit of publication must be filed.

(d) Procedure for Permanent Suspension or Termination Hearing.

A. A hearing on a Petition for Permanent Suspension or Termination of Parental Rights will be held no sooner than 30 days and no later than 60 days after the filing date unless all parties agree otherwise.

B. If the parent(s) are not present, Court will ask on the record whether the parent received proper notice if there is no sworn return of service showing receipt by the parent of the Petition and Notice of Hearing. A sworn return of service by Tribal Court, Police, Family and Children's Services or another Tribal Agency that actual notice of hearing was provided to the biological parent(s) is prima facie evidence that notice was provided.

C. Necessary parties: biological parents, petitioner, respondent, family members, Family and Children's Services, caregiver or foster parents, guardians, custodians, or other individuals the Court deems necessary may be present at the hearing.

D. The Court will address the parents and ensure they know and understand:

i. their rights under § L-5(h);

ii. the nature of the proceedings; and

iii. the potential consequences, including permanent suspension or termination of parental rights.

E. The Court must find that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite active efforts made by Family and Children's Services, or that any such efforts would be futile due to the severity or nature of the abuse, neglect, or abandonment.

F. The Court will consider:

i. mental illness of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

ii. a history of severe violent behavior by the parent; and

iii. severe substance-use disorder of the parent that endangers the child and active efforts by the Pueblo have been unable to rehabilitate the parent.

G. Findings. The Court must find:

i. that active efforts by the Pueblo were unable to rehabilitate the parent that or that any such efforts would be futile due to the severity of the case;

ii. that all services available to the Pueblo have been made available to the parent and the parent's behavior is not conducive to treatment or rehabilitation; and

iii. that the conduct or condition of the parent that makes him or her unfit is unlikely to change in a reasonable time and continuation of the parent-child relationship will, more likely than not, result in continued abuse or neglect, or that because of the seriousness of the conduct or conditions, the parent(s) are unfit, unable, or unwilling to ensure the safety of the child.

(e) Final Order Permanently Suspending or Terminating Parental Rights. An Order Permanently Suspending or Terminating Parental Rights under this section will include finding of fact and conclusions of law, including the basis for the order. The Court may issue a decision on the record immediately following the hearing. A written final order must be entered within twenty-eight (28) days after the final hearing.

(f) The respondent parent is entitled to Appellate Review of the order and must file their notice of appeal within ten (10) calendar days pursuant to Sections B-4(f)(Civil Appeals) and B-5 (Right of Appeal).

(g) The Tribal Secretary will be sent a copy of a Final Order at the conclusion of any proceeding involving the Permanent Suspension or Termination of Parental Rights.

(h) Child's Continued Rights to Benefits. An Order Terminating the Parent-Child Relationship will not disqualify a child from any benefit due the child from any third person, agencies, states, or the United States. A termination order will not prevent a child from inheriting property or interest in the same manner as any other biological child from the biological parent. Nor will any action under this Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

(i) Effect of Termination of Parent-Child Relationship.

1. Upon the termination of parental rights, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and the parent will be severed and terminated unless otherwise provided in the termination order. The parent will have no standing to appear at any future legal proceeding concerning the child. Any support obligation existing prior to the effective date of the order terminating parental rights will be severed or terminated.

2. The rights of one parent may be terminated without affecting the rights of the other parent. A biological parent may not, however, inherit from a biological child after termination.

L-21 Adoption

(a) Adoption creates a legal relationship between a parent and adopted child that is identical to that of a parent and biological child.

(b) All adoption proceedings are strictly confidential.

1. Unless the adoptive parent agrees to be contacted or agrees to the release of their identity to any biological parent, Tribal Court, Family and Children's Services, and any other party shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known.

2. Unless any biological parent agrees to be contacted or agrees to the release of their identity to the adoptive parent, Tribal Court, Family and Children's Services, and any other party shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known.

3. After the petition is filed and prior to the entry of the decree, the records in adoption proceedings shall be open to inspection only by the petitioner or their attorney, Family and Children's Services, any attorney appointed as a guardian ad litem or attorney for the adoptee, any attorney retained by the adoptee, or other persons upon order of Children's Court for good cause shown.

4. All records, whether on file with Tribal Court, Family and Children's Services, an attorney or other provider of professional services in connection with an adoption, are confidential and may be disclosed only pursuant to Court order.

5. All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than parties, including Family and Children's Services and any necessary professional.

6. A person who intentionally and unlawfully releases any information or records closed to the public or releases or makes other unlawful use of records may be found in contempt of court and be fined up to $5,000.

(c) Any caretaker may petition, in writing, Children's Court for adoption of a child when that child has no living parent or parental rights of the biological parent have been terminated or suspended.

(d) A child may go through the adoption proceeding when parental rights have been permanently suspended, rather than terminated. Customary adoption is the process of

creating new parents without terminating the parental rights of biological parents. Adoption will permanently suspend a parent's traditional and legal right to a relationship with the child if Children's Court determines that it is in the child's best interests.

(e) The Pueblo represents the caretaker when there is a written petition for adoption of a child.

1. Family and Children's Services will be served with any adoption petitions and will participate in any adoption hearings.

2. Family and Children's Services may provide or request additional information from any adoptive parent or other person involved.

(f) All prospective adoptive parent(s) will complete a Pueblo program for adoptive parent(s). The required program shall be administered through the Pueblo of Pojoaque Family and Children's Services Department. The required program will not be longer than six (6) months, unless the Court finds that there is good cause for extending the length of the program. If there is good cause, the program may recommend adoption to Children's Court before six (6) months.

(g) Before any adoption is finalized, a pre-placement study will be completed by Family and Children's Services and will include:

1. an interview with each adoptive parent;

2. a home visit, including interviews with any other individuals residing at the home, including children;

3. an interview with the adoptee, if age appropriate;

4. a criminal records check of each adoptive parent and adult residents of the home;

5. a statement from the adoptive parents of their readiness and ability to shelter, feed, care for, clothe, and educate the adoptee; and

6. verification of the adoptive parent's financial resources;

(h) Hearing for Decree of Adoption.

1. When all preliminary studies and counseling are complete, the Court will conduct a hearing on the petition for adoption. The petitioner and the adoptee shall attend the hearing unless the Court waives a party's appearance. Appearances may be telephonic or virtual.

2. Family and Children's Services will work with the adoptive parent to ensure that all necessary paperwork is filed and all necessary parties receive notice of the hearings.

Notice shall not be served on alleged parents or parents whose rights have been terminated or suspended. Service of the petition and notice of hearing is required to:

A. Family and Children's Services;

B. any acknowledged parent whose rights have not been terminated or suspended;

C. the legal guardian or custodian of the adoptee;

D. any spouse of the adoptive parent;

E. any parent of a deceased biological parent of the adoptee;

F. anyone known to have court-ordered custody of or visitation with the adoptee;

G. anyone in whose home the child has resided for at least two of the six months before the hearing; and

H. any other person designated by the Court.

3. Any person may respond to a petition for adoption by filing a response with Children's Court within 20 days after the petition is filed.

4. The Court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

A. Pojoaque Children's Court has jurisdiction to enter a decree of adoption affecting the adoptee;

B. the adoptee has been placed with the adoptive parent for a period of 90 days if the adoptee is under the age of one year at the time of placement or for a period of 180 days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by Children's Court;

C. all necessary consents, relinquishments, terminations or suspension of parental rights, or waivers have been obtained;

D. service of the petition for adoption has been made or waived to all persons entitled to notice;

E. the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption;

F. if visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests; and

G. the results of the criminal records check have been received and considered.

(i) When the decree of adoption is issued, the adoptive parent(s) becomes the legal parent(s) of the child. The biological parent(s) will have no legal obligation to give any emotional or financial support to the child.

(j) Stepparent adoption.

1. A person may adopt her or her spouse's children under certain circumstances:

   A. The adoptee must have lived with the stepparent for at least one year following marriage to the custodial parent.

   B. The non-custodial parent must have had their parental rights terminated or must consent to voluntarily relinquish their parental rights in a court of competent jurisdiction.

   C. If the child is 10 years of age or older, he or she will receive counseling about the adoption.

   D. If age-appropriate or if the child is 10 years of age or older, the Children's Court judge will meet with the child before adoption and may require the child to appear at any adoption hearings.

   E. If the adoptee is 14 years of age or older, he or she must consent to any name changes.

2. A petition for stepparent adoption will be completed and filed with the Children's Court with all pertinent information.

3. Any petition for stepparent adoption and notice of hearing for the adoption proceeding will be served by the petitioner on the following people, unless notice has been waived previously in writing:

   A. any acknowledged mother or father of the adoptee;

   B. the surviving parent of a deceased parent of the adoptee; and

   C. any person known to the petitioner having custody of, or visitation with the child under a court order.

   D. Notice does not have to be served on any alleged or putative father or any person whose parental rights have been legally relinquished or terminated (court order). Service may be by publication with permission of the Court when a person's whereabouts are unknown.

(k) All decrees of adoption are final and not appealable. Children's Court may reconsider adoption decrees only upon a finding of fraud.

(l) Within 30 days after an adoption decree is issued, the Petitioner will prepare an application for a birth certificate in the new name of the adoptee and have it certified by the Tribal Court Clerk. The birth certificate will be in the new name of the adoptee showing the Petitioner(s) as the adoptee's parent(s). Petitioner will then forward the application to New Mexico Vital Records or the vital statistics office of the state where the child was born.

(m) Access to Records after Adoption. After the final order of adoption is entered, the court file containing documents related to the adoption will be kept strictly confidential. Any person or agency seeking to look at the court file must obtain an order from Tribal Court.

1. At any time, a biological parent may file with Tribal Court or Family and Children's Services a consent or refusal to open the file for inspection by the adoptee or be contacted about the adoption.

2. At any time, an adoptee who is eighteen years of age or older may file with the Court, a placing agency, or the department a consent or refusal to open the adoptee's adoption file to the adoptee's biological parent(s) or be contacted about the adoption.

L-22 School Attendance Policy

(a) The Pueblo of Pojoaque Social Services Department shall petition the Pueblo of Pojoaque Juvenile Court to declare a child who does not attend school as "a neglected child" or "a child in need of supervision."

(b) The parent or parents of the child shall attend all court hearings and the Juvenile Court shall order those parent or parents to comply with any of the court's conditions that will stop the absenteeism.

(c) The Juvenile Court decisions in these matters shall be final and not appealable to the Tribal Council.

L-23 Policy and Procedures of Child Protection Team

(a) Policy for Child Protective Services. The Pueblo recognizes that children are one of its most valuable resources. The Pueblo hereby declares that it is the policy of the Pueblo to protect the best interest of its children and to promote the stability and security of the Pueblo through the Child Protection Team ("CPT or Team").

(b) Mission Statement and Purpose. The purpose of Indian child protective services is to promote the stability and security of Indian Tribes and families, and to prevent abuse, neglect, delinquency, and exploitation of children by reaching out with services to stabilize family life and to preserve the family unit.

(c) Goals.

1. To implement tribal placement standards established by Pueblo of Pojoaque Tribal Council for the placement of Pueblo of Pojoaque children from their families in which abuse and/or neglect occur.

2. To provide recommendations for the placement of abused and/or neglected tribal children in foster or adoptive homes which reflect the unique values of Pueblo culture.

3. To make recommendations for the provision of short and long-term child protective services for any case of tribal delinquency, child abuse, child neglect, educational neglect or child in need of supervision.

(d) Responsibilities & Duties of the CPT. The CPT shall serve as an advisory board to the Pueblo on child custody and placement matters. The CPT shall review child custody placements involving Pueblo children, as requested by the Social Services Department, and make recommendations regarding placements of Pueblo children. The CPT may make recommendations concerning tribal policies and practices with respect to Pueblo children to the Social Services Department and to the Pueblo of Pojoaque Tribal Council. The CPT shall undertake such additional duties and responsibilities as requested by the Tribal Council.

(e) Members and Leadership of the CPT. Membership shall consist of seven (7) voting members and three (3) nonvoting members appointed by Pueblo of Pojoaque Tribal Council to serve such terms at the pleasure of the Tribal Council until removed or replaced. Members shall be recruited from groups, professions and tribal representatives with special interest or expertise in child welfare and child abuse and neglect. Voting Members may include but not limited to members representative of Tribal Officials, Tribal Council, Tribal Education Department, Tribal Law Enforcement, and Tribal Social Services Department. Nonvoting Members may include but not limited to members representative of Boys and Girls Club, Child Development Center, Youth Program, and where necessary, an attorney or other legal representative. The designated head of the CPT shall be a Chairperson.

(f) Confidentiality. All information and records acquired by the CPT in the exercise of its duties are confidential and may only be disclosed as necessary to carry out its lawful purposes. CPT members shall be advised of the confidential nature of the position and are required to sign confidentiality agreements on a yearly basis. A breach of confidentiality is grounds for removal from the CPT or work-related disciplinary actions if the member is an employee of the Pueblo of Pojoaque.

(g) Conflict of Interest. Conflicts of interest are determined on a case-by-case basis by the Chairperson. If a case involves a relative to one of the CPT members, the member may withdraw their participation. If the member decides not to withdraw participation, (s)he may remain involved in the case as long as their involvement does not interfere with the proper handling of the case as determined at the discretion of the Chairperson.

L-24 Foster Care Standards

(a) Purpose. The Pueblo of Pojoaque Social Services Department through Tribal Council Resolution 2014-056 established these foster care standards to implement a foster care system for children placed in protective custody. By enacting the standards set forth in this document, the Pueblo of Pojoaque does not waive sovereign immunity. Nothing contained in this document shall be construed or interpreted in any way as a waiver, express or implied, of the Pueblo's sovereign immunity.

The Department established these foster care policies and procedures in order to set forth basic standards for safe guarding, protecting, and promoting the health, safety, and welfare of children placed in foster homes. These procedures establish requirements for the licensing of Foster Parents and their homes. These standards assure the placement of a child in a foster care setting that both protects the best interests of the child while promoting the continued unity of the family, extended family, and the Pueblo.

(b) Policy.

1. Safety and Cultural Competency**.** The Pueblo of Pojoaque believes strongly in the safety and well-being of children and their families. The Pueblo believes that children are the key to its future and survival of the Pueblo's culture and customs. Under certain circumstances it may become necessary to place a child (ren) in protective custody, resulting in out of home placement, in order to ensure safety. The Department will initially seek placement of the child (ren) within his or her extended family or within a tribally sanctioned family setting within the Pueblo. Such placement will constitute foster family care. While the child is in out of home placement, every effort will be made by the Department to work toward reunification of the child with his or her biological family; if it is in the best interest of the child.

(c) Definitions.

1. "Change in the Household" shall mean a specific change that have occurred which either increases or decreases the number of members in the household.

2. "CPT" means Pueblo of Pojoaque Child Protection Team.

3. "Department" refers to the Pueblo of Pojoaque Social Services Department.

4. "Emergency Foster Home" means a tribally-licensed private family home that agrees to be available 24 hours a day, seven days a week for children who are in need of emergency substitute care. Placement in these homes should not exceed 30 days.

5. "Extended Family" refers to those family members who are not considered immediate family, but referred to as family by blood relation, to include maternal/paternal grandparents, aunts, uncles, cousins, etc.

6. “Foster Care” means a child who is receiving protective services from law enforcement and social services, which has been placed in a tribal licensed foster family home.

7. “Foster Home Care” means a service by which temporary, planned substitute care is provided to a child in a private, tribally licensed home when his/her own home is determined to be contrary to the safety of the child.

8. “Foster Parent” or “Foster Care Parent” includes any person who acts as parent and guardian for a child in place of the child's natural parents but without legally adopting the child (ren).

9. “Good Character and Habits” refers to an individual who displays responsible and mature behaviors in all aspects of self and community.

10. “License” means a document issued by the Pueblo of Pojoaque that officially sanctions a tribal member’s eligibility to maintain a foster home for children.

11. “Major Crime” refers to a serious crime such as murder, rape, armed robbery, etc. that are looked upon as felonies in a Court of Law.

12. “Permanency Planning Activities” means specific activities that affect biological parents, Foster Parents and foster child, which address the problem and implement goals towards reunification.

13. “Permanent Change of Residence” occurs when a residence has changed to another location with full knowledge that the residence is to be permanent.

14. “Regular Foster Home” means a tribally-licensed private family home that agrees to provide on-going temporary foster care for a child for a period up to one year.

15. “Pueblo” means the Pueblo of Pojoaque.

16. “Tribal Court” means the Pueblo of Pojoaque Tribal Court.

17. “Tribally Licensed” means an individual or individuals holding a valid license as a foster family issued by the Pueblo of Pojoaque.

(d) Licensure Assessment. The Department is the designated agency responsible for licensing of foster home providers for the Pueblo based on assessments or home studies of the applicant, the applicant’s family, and the applicant’s home environment to determine whether the home would be safe and appropriate for foster children. In order for and Application to be considered complete, the Applicant must provide:

1. Application. The initial evaluation of Foster Parent(s) shall include the following information contained within an Application:

A. Background information

B. Health information

C. Appropriate BIA/Tribal/State Police background check

D. Three Character References (non-relatives)

E. Pass a Drug Test

2. Foster Parent Agreement

3. Classification of Home:

A. Emergency

B. Regular

C. Kinship

(e) Determination of License.

1. The Department shall evaluate the applicant based upon personal interviews, screenings, criminal background check and home visits. Based on the evaluation, tribal social services shall determine whether to issue a foster care license.

2. The Department shall re-evaluate the foster home provider for continued licensure on an annual basis. Re-evaluation shall consist of home visits to review licensure compliance, and if appropriate, a renewal of licensure will be issued.

3. Any license issued by the Department shall apply only to the residence where the foster home provider is living at the time an application for license is made.

4. Any Foster Parent arrested of any criminal offense while being licensed as a Foster Parent, must complete a drug/alcohol evaluation and comply with the recommendations of the evaluation. The Foster Parent must provide the Department with a copy of the criminal complaint and the order of disposition on the Foster Parent's criminal case. Upon notice of the criminal offense, the Department will conduct an assessment to determine the safety and impact of the arrest and/or criminal offense on the foster child. If a determination is made by the Department that the foster child will no longer be safe in the home, the child(ren) will be removed immediately and the foster licensure will be terminated. If the offense is minor and does not involve drugs or violence, then the Department, after completing the foster child safety assessment, may determine with the recommendation of the CPT to allow the foster child(ren) to continue to reside at the foster home with close supervision by social services. Upon conviction of a criminal offense, the Foster Parent must comply with all conditions set

by the Court. A second criminal arrest will result in immediate termination of foster care licensure and immediate removal of the foster child(ren) from the home.

(f) Assessment.

1. The Department shall examine homes of tribal members and other applicants who reside within the exterior boundaries of the Pueblo for either approval or renewal of licensure of the home.

2. The Department shall submit licensing recommendations to the Governor for approval within thirty (30) days of the initial assessment, upon submission of licensure; the Governor shall have five (5) business days to review and approve/disapprove the recommendations.

3. No foster home should have more than four foster children placements, except in a case involving a sibling group or under exceptional circumstances.

4. A permanent change of residence of a foster family outside of the Pueblo's exterior boundaries will automatically terminate the foster care license.

5. Foster Parents are required to notify the department whenever a change of residence is contemplated.

6. Foster Parents must notify the Department whenever a change in the household occurs. For example, if one of the Foster Parents is convicted or is accused of a major crime or one of the parent's moves out of the home, or any other person moves into the residence, the Department MUST be notified within 72 hours.

7. The Department may inspect a foster care dwelling at any reasonable time, or at any time where there is a specific concern regarding licensure compliance or safety of a child. The Department will inspect a home once each month unless otherwise ordered by the Tribal Court.

8. The Department's staff will not be licensed as Foster Parents due to a conflict of interest. They may, however, become licensed through another agency.

(g) Foster Home Requirements.

1. The foster home shall be constructed, arranged, and maintained so as to provide for the health and safety of all occupants.

2. Heating, ventilation, and lighting shall be sufficient to provide a comfortable atmosphere. Furnishing and housekeeping shall be adequate to protect the health and comfort of the foster child.

3. Comfortable beds shall be provided for all members of the family.

4. Sleeping rooms must provide adequate opportunities for rest.

5. All sleeping rooms must have a window of a type that may be opened readily and may be used for evacuation in case of fire.

6. A working smoke detector must be in place and in working order. A fire escape plan to the exterior should be in place and explained at the time of the home study.

7. Play space shall be available and free from hazards, which might be dangerous to the life or health of the child.

(h) The Foster Family.

1. All members of the household must be in good physical, mental health and free of physical/mental illnesses that may adversely affect the health of the child(ren) or the quality and manner or his/her care.

2. Members of the foster family shall provide letters of reference and exhibit good habits, be responsible, and be viewed by most community members as being of good moral character.

3. Foster home providers must be able to pass a criminal background investigation.

4. Members of the foster family must never have been convicted of a sex/child abuse offense or any violent crime and may not have any felony convictions within the last three (3) years from the date of application.

5. The Department is authorized to make a complete investigation to determine the adequacy of the foster care home if abuse or neglect is reported on the Foster Parent. It is the responsibility of the Department (with assistance from law enforcement, if necessary, to remove the child from the foster home until the investigation is complete.

6. The person in charge of the foster home shall be of suitable temperament to care for the children, shall understand the special needs of the child and shall be capable of raising the child in a sound cultural supportive environment that promotes the child's development that enables the child to get along within the tribal community and the surrounding non-Indian community as well. Foster Parents may introduce the foster child to Christianity if they are practicing Christians. In such cases, they should inform the Department so this activity is specifically identified in the child's care plan.

7. Foster Parents must be at least twenty-five years of age. The exception will be when a member of the foster child's family applies to care for its sibling and is between the age of 18 and 25 years of age. The adult sibling must demonstrate ability to provide a home and safe environment for the foster child and meet the same criteria as all other Foster Parent applicants. All Foster Parent applicants must be assessed by the

Department for physical and emotional stamina to deal with the care and supervision of a foster child.

8. The Foster Parents must be willing, when necessary, to cooperate with the biological parents and must be willing to help the family towards reunification as determined by the Department in conjunction with the Tribal Court.

9. A foster home does not require both a male and female Foster Parents. The Department, at their discretion, will certify a foster home with a single Foster Parent provided that Foster Parent displays the outstanding qualities necessary to raise a foster child.

10. The Foster Parent(s) will be willing to accept the goals and policies of the foster care program and be able to effectively follow through with all plans determined to be in the child's best interest.

11. The Foster Parent(s) will partake in permanency planning activities that involves the foster child.

12. The Foster Parent(s) will be required to complete a two and a half day training on foster care responsibilities, parenting for special needs, child development and family services and education classes and services available for Foster Parents. Additionally, Foster Parents must complete a continuing education class of at least eight hours, as identified by the Department that will be required to maintain licensure.

13. The Foster Parent(s) shall treat the child as a member of the family. Each child is entitled to the same treatment as members of the family.

14. The Foster Parent(s) must have an income sufficient to care for the child placed in their home. Only in exceptional situations shall a family be licensed when the foster care payment is the primary source of income for the family.

    A. Payment for Foster Parents is $500.00 monthly

    B. In the event that a foster child is with a Foster Parent longer than six (6) months the Foster Parent may request up to $500.00 for bedding, clothing and any extra necessities that the foster child may need.

    C. If a Foster Parent is in need of assistance of any monetary help with medical bills, or other emergency situations, assistance will be provided only if approved by Director of the Department or any Pueblo of Pojoaque Tribal Official.

    D. Foster children who receive SSI benefits will have the monthly foster care payment paid by the Pueblo reduced to the amount essential to meet the $500 monthly foster care payment.

15. For school age children, the Foster Parent must arrange to provide for childcare for those periods of time when both Foster Parents are employed. Infants and young children shall never be left alone without competent supervision. "School age" refers to children 6 to 12 years of age and 5 year olds who are in kindergarten.

16. The Foster Parent(s) will not release information pertaining to the foster child in public media (Facebook, etc.). The Foster Parents will release information only to the school in which the child is enrolled; to medical care providers; or other service providers included in the child's care plan. The Department must approve all other releases of information. Release of unauthorized foster child information is a violation of the child's confidentiality.

The standards the Department will use in judging the above criteria shall be those of the Pueblo.

17. A Foster Parent must comply with the reunification plan developed by the Department. The only visitation with biological parents will be times established by the Department. The Foster Parent must report to the Department when biological parents attempt to visit the child outside of the times specified in the reunification plan.

18. Foster Parents are mandated to notify the Departments when they are leaving foster children with other relatives for an extended period of time. The Foster Parents must provide Department with the name of the temporary care taker, care taker's home address, and phone number. An emergency plan for medical care must be arranged with the temporary care taker in the absence of the Foster Parent.

(i) <u>The Foster Child.</u>

1. The daily routine of a foster child shall be such as to promote education, good health, rest, and play habits.

2. The responsibility for the child's health care shall rest with the Foster Parent(s).

   A. In case of sickness or accident to a child, it is mandated that the Department be contacted immediately. Foster Parents will be assisted in obtaining a Medicaid card for the foster child, as well as provide the Indian Health Service (IHS) card number for medical services through IHS.

   B. Foster Care Parent(s) may consent to surgery or other treatment in a medical emergency, but are mandated to contact the Department as soon as the medical provider determines surgery is necessary.

3. The Foster Care Parent(s) or their family members shall not subject the child(ren) to verbal abuse, derogatory remarks about himself, his natural parents or relatives and/or threats to expel the child from the foster home.

A. No child shall be deprived of meals, mail or family visits (when authorized by the Department or the Tribal Court) as a method of discipline.

4. Discipline shall be administered by the Foster Parents in such a way as to help the child develop self-control and learn to assume responsibility for his/her actions and shall be administered with understanding and reason.

5. No family member of the Foster Parents shall discipline the child.

6. Task and work assignments shall be appropriate to the age and abilities of the child and should not interfere with school, health and necessary recreation. All Foster Parents' family members should work equally in the home.

(j) Physical Characteristics of Foster Home.

1. The Department shall inspect the entire premises and property of the Foster Parent to ensure licensing requirements are met. The Department will write a report on the inspection for inclusion in the Foster Parents' applicant file.

2. The house and premises must be clean and free from hazards that jeopardize health and safety of the foster child and family members. The Department will conduct health inspections during monthly home visits.

3. The home must comply with any tribal fire inspection codes and tribal ordinances. Any physical changes to the home will need to be re-inspected to insure that no deficiencies exist. Any deficiency identified by the Department will be corrected within a certain period of time set by the Department. The Foster Parent will receive a letter providing them with a description of the deficiency and timeline for making the corrections. Once the corrections are made, the Department will conduct an inspection to ensure compliance of the home for licensure.

4. Each foster home must be equipped with a smoke alarm/detector and fire extinguisher. This equipment must be checked periodically to show they are in excellent working order.

5. Windows, doors and lights must be in good working condition to show that they can be used in the plan of escape route in case of fire.

(k) Revocation of Foster Care License.

1. The Department may revoke foster care licenses when the licensee has substantially violated any provision of these Standards.

2. The Department shall give the licensee written notice within one (1) business day from the time of violation. The representative will provide written documentation as to the

grounds for revocation of the foster care license, which will be hand deliver the notice to that foster home.

(l) Administrative Hearing.

1. Any licensed Foster Parent(s) whose license has been revoked has the right to request an administrative hearing by the Governor or Tribal Court.

2. A request for such a hearing must be filed within ten (10) business days of receipt of the written notice of revocation of license, to the Governor.

3. The Foster Parent(s), Governor, the Department, Law Enforcement, (if applicable), and any other parties directly involved in the matter pertaining to the violation may attend the hearing.

4. A final determination of revocation following a hearing will be based on the decision of the Governor.

5. During the time of violation up until the final outcome of the hearing the foster child will be placed in an emergency foster home.

6. A determination by the Governor of no violation of licensure will result in the return of the child to the Foster Parent with a plan to be developed by the Department for weekly monitoring until which time the child is reunified with the biological parents.

L-25 Forgiveness of Foster Care Debt

(a) Outstanding foster care debt to the Pueblo pursuant to Subpart I-13 may be forgiven through Tribal Court Order.

(b) The parent(s) of children placed in foster care with outstanding debt of Family and Children's Services may petition the Court for debt forgiveness any time after family reunification. The parent(s) of children placed in permanent guardianship or who have relinquished or had their parental rights terminated by tribal Court order may petition the Court at any time for foster care debt forgiveness.

(c) Tribal Court will schedule a hearing on the issue of foster care debt forgiveness. The party requesting debt forgiveness may testify, bring witnesses, or produce other evidence to the Court to support the petition.

(d) Family and Children's Services will provide a written recommendation to the Court regarding whether foster care debt should be forgiven, or how much of the debt should be forgiven.

(e) In deciding whether outstanding foster care debt should be forgiven, Tribal Court will consider any relevant information including but not limited to, how well the parent(s)

followed their case plan or court orders; the stability and/or length of time since reunification, permanent placement with others, or whether any of the parent(s) children aged out of foster care or were placed permanently with others; and the recommendation from Family and Children's Services.

(f) Based on the relevant information produced on the record, Tribal Court may order that some, all, or none of any outstanding foster care debt be forgiven. Tribal Court will make written findings to support its decision.

(g) Any decision on whether any outstanding foster care debt is forgiven is solely in the discretion of Tribal Court.

(h) The Tribal Court decision may be appealed pursuant to the Pueblo of Pojoaque Law and Order Code, Subpart J-8.

L-26 Curfew for Minors

(a) Curfew for Parks & Recreation Areas. No person under eighteen (18) years of age, other than duly authorized employees or officers of the Pueblo, is permitted to be in or on any park or recreational area within the exterior boundaries of Pojoaque Pueblo between the hours of 9 PM and 6AM of any day from June 1 through August 31 and between the hours of 7PM and 6AM of any day from September 1 through May 31, except when organized activities are scheduled by approval of the Pueblo of Pojoaque Tribal Council and/or the Governor.

(b) No parent or legal guardian of a child under the age of eighteen (18) years may knowingly allow such child to be upon the streets or other public places within the exterior boundaries of Pueblo of Pojoaque between the hours of 9PM and 6AM from June 1 through August 31 and between the hours of 7PM and 6AM from September 1 through May 31, hereinafter called "Curfew Hours".

(c) No child under the age of eighteen (18) years is permitted to be upon the streets and other public places within the exterior boundaries of the Pueblo of Pojoaque during Curfew Hours, except under the following conditions:

1. When accompanied by a parent or legal guardian or by some adult to whose care the child has been entrusted by such parent or guardian.

2. When attending a social, patriotic, religious, education, athletic, civic or other similar activity sponsored by a recognized school, church, fraternal or community organization, but in such event, not later that 9PM from June 1 through August 31 or 7 PM from September 1 through May 31 or forty-five (45) minutes after such events terminate.

Any parent or legal guardian who violates or allows a child under his or her custody or control to violate this ordinance may be assessed a civil penalty up to ten dollars ($10) for the first

violation, and twenty dollars ($20) for the second violation. Any subsequent violations will be assessed a civil penalty of fifty dollars ($50) and family counseling will be mandatory.

Subpart M Criminal Offenses

M-1 Definitions

In this Subpart, unless the context otherwise requires:

(a) "Adult" shall mean a person who is 18 years of age or older.

(b) "Bodily injury" shall mean impairment of physical condition or substantial pain.

(c) "Deadly weapon" shall mean any instrument used in such a manner as to render it capable of causing death or serious bodily injury.

(d) "Dangerous weapon" shall mean any instrument of the type described in Section M-10 of this Subpart.

(e) "Serious bodily injury" shall mean physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(f) "Sexual contact" shall mean any contact of the sexual or other private parts of another for the purpose of arousing or gratifying sexual desire of either party.

(g) "Person" shall mean an Indian person.

(h) "Range management personnel" shall mean the Nature Resource Manager of the BIA or his representative.

(i) "Cannabis Code" means the Commercial Cannabis Activity Code, codified at Subpart R-6 of the Law and Order Code;

(j) "Cannabis," "Cannabis Activity," "Cannabis Establishment," "Qualified Patient," and "Reciprocal Participant" have the same meaning as that set forth in the Cannabis Code.

(k) "Drug Paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing cannabis for injecting, ingesting, inhaling, or otherwise introducing into the human, but does not include any of the aforementioned items possessed and used in accordance with the cannabis code.

(l) "Visible Possesses" includes, but not limited to, carrying in an open shirt pocket, and open purse, or on the body of a person were visible to the public.

M-2 Abduction

(a) A person who willfully takes or entices away:

1. Any child under the age of thirteen (13) years from his parents, guardian or custodian; or

2. Any person from his lawful custodian, or against his will and desire, no lawful right to do so, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-3 Aiding and Abetting

(a) When an act is declared an offense under this Code, and no punishment for counseling or aiding in the commission of the act is expressly prescribed by the law, a person who counsels or aids another in the commission of the act is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-4 Assault

(a) A person who unlawfully attempts or threatens to cause bodily injury to another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-5 Battery

(a) A person who:

1. Willfully and unlawfully uses force or violence upon the person of another; or

2. By threatening force or violence, causes another to harm himself; or

3. Recklessly causes physical injury to another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-6 Bigamy

(a) A person who marries another person while having a husband or wife living is guilty of an offense.

(b) Paragraph (a) of this section shall not apply to any person whose husband or wife has been absent for five years, without being known to such person within that time to be living, nor to any person whose former marriage has been dissolved by any court of competent jurisdiction.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-7 Bribery – Giving

(a) A person who gives or offers to give to another person money, property or other things of value with intent to influence a public servant in the discharge of his public duties is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-8 Bribery – Receiving

(a) A public servant who asks, receives, or offers to receive from another, money, property or other things of value, with intent or upon a promise to be influenced in the discharge of his public duties, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-9 Bribery – Soliciting

(a) A person who obtains or seeks to obtain money, property, or other things of value, upon claim or representation that he can or will improperly influence the action of a public servant in the discharge of his public duties is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-10 Carrying a Concealed Weapon

(a) A person who has concealed on or about his person a dangerous weapon is guilty of an offense.

(b) A dangerous weapon as used in Paragraph (a) of this section shall include any:

1. Air-gun, blowgun, explosive device, pistol or other firearm;

2. Bayonet, dagger, switchblade, bowie knife, or other kind of knife;

3. Sling shot, club, blackjack or chain;

4. Sword, sword cane or spear;

5. Metal knuckles; or

6. Any other instrument capable of lethal use, possessed under circumstances not appropriate for lawful use.

(c) A folded pocket knife with a blade three inches (3") or less is not considered a dangerous weapon, except a switchblade.

(d) Paragraph (a) shall not apply to any person authorized by the Pueblo of Pojoaque, tribal, state, federal governments or subdivisions thereof to carry such weapons.

(e) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

(f) Any weapons concealed in violation of this section shall be subject to seizure and forfeiture as provided in Subpart H-24.

M-11 Child Molesting

(a) A person who:

1. Engages in sexual intercourse with a person under the age of sixteen (16) years, not his spouse; or

2. Subjects a person under the age of sixteen (16) years, not his spouse, to any sexual contact is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-12 Conspiracy

(a) A person is guilty of conspiracy if, with the intent to commit or to have another person commit any action constituting an offense under this Code, he conspires with one or more persons to engage in or cause the commission of such.

(b) No agreement amounts to a conspiracy unless some act besides such agreement is done to affect the object thereof by one or more of the parties to the agreement.

(c) Upon a trial for conspiracy, the defendant shall not be convicted unless one or more overt acts are expressly alleged in the complaint, nor unless one of the acts alleged is provided, but other overt acts not alleged may be given in evidence.

(d) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-13 Contributing to the Delinquency of a Minor

(a) An adult person who:

1. Knowingly causes, encourages or advises a minor to commit an offense as defined under the provisions of Subpart L of this Code is guilty of an offense.

2. Knowingly causes, encourages or assists a minor to be delinquent as defined under the provisions of Subpart L of this Code is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-14 Criminal Negligence

(a) A person who:

1. Recklessly endangers the safety of another; or

2. Acts with careless disregard for the safety of another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-15 Criminal Trespass

(a) A person who:

1. Enters or remains upon any public property for an unlawful purpose; or

2. Without good cause enters, remains upon, or traverses lands or other property not his own, where notice against trespassing has been reasonably communicated by the owner or occupant is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-16 Cruelty to Animals

(a) Any person who engages in any of the following acts shall be guilty of violating this Section:

1. Tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills any animal;

2. Unnecessarily fails to provide any animal with proper food or drink; or

3. Allows any pet to run at large within the exterior boundaries of the Pueblo of Pojoaque.

(b) A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

(c) Any person who violates this Section shall also be liable for any costs accrued by the Santa Fe County Animal Control Unit.

M-17 Disobedience of Lawful Order of the Court

(a) A person who willfully disobeys any order, subpoena, warrant or command, duly issued by the Pueblo of Pojoaque Tribal Court or any officer thereof is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-18 Disorderly Conduct

(a) A person who:

1. Engages in fighting or provokes a fight;

2. Disrupts any lawful public or religious meeting;

3. Causes unreasonable noise; or

4. Uses language or gestures knowing them to be obscene or likely to provoke a fight, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-19 Disposing of Property of an Estate

(a) A person who, without proper authority, uses, sells, transfers, or otherwise disposes of any property of an estate before determination of devisees, heirs, or other distributees is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-20 Escape

(a) A person who willfully escapes, attempts to escape, or assists in an escape from lawful custody is guilty of an offense.

(b) "Lawful Custody" shall mean confinement by court order or actual or constructive restraint by a police officer pursuant to an arrest.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-21 Extortion

(a) A person who compels or induces another person to deliver property to himself or to a third person by threatening that if the property is not delivered, the actor or another will:

1. Cause physical injury to some person;

2. Cause damage to property;

3. Accuse some person of a crime or cause criminal charges to be instituted against some person;

4. Expose a secret or publicize an asserted fact, whether true or false; tending to subject some person to hatred, contempt or ridicule;

5. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

6. Use or abuse his position as a public servant by performing some act within or related to his official duties or by failing or refusing to perform an official duty in such manner as to affect some person adversely is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-22 Failure to Submit to Treatment for a Contagious Disease

(a) A person who knows or has reason to know that he is infected with a venereal disease, active tuberculosis or other contagious disease and who willfully exposes another to the disease, in a place other than a medical facility, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days; provided, that such sentence shall be suspended if the offender agrees to medical treatment.

(c) The Court upon finding reasonable cause to believe that a person has any contagious diseases may order the person examined. If, upon examination, the person is found to be infected with any of the aforementioned diseases, the Court may order the person to submit to medical treatment as prescribed by competent medical authority.

M-23 Failure to Send Children to School

(a) A person who, without good cause, fails or refuses to send his children or any children under his care to school, while such children are between the ages of six (6) and sixteen (16), is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-24 Failure to Support

(a) A person who knowingly and without justification fails to support, care for, or protect a spouse, child or other person for whose support he is responsible is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-25 Forgery

(a) A person who, with intent to defraud:

1. Falsely signs, completes or alters any written instrument;

2. Passes as genuine that which he knows to be a forged instrument is guilty of an offense.

(b) "Forged instrument" shall mean a written instrument which has been falsely signed, completed or altered.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-26 Fraud

(a) A person who obtains property:

1. By willful misrepresentation of fact; or

2. By falsely interpreting; or

3. By failure to reveal facts which he knows should be revealed with intent to defraud another of such property is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-27 Gambling

(a) A person who knowingly stakes or risks a thing of value in a game of chance upon an agreement or understanding that he or some other person may receive something of value depending on the outcome is guilty of an offense.

(b) Under Paragraph (a) of this section, "bingo," raffles and lotteries shall not be considered games of chance when conducted by religious or charitable organizations authorized by the Tribal Council to conduct such games.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-28 Unlawful Restraint

(a) A person who unlawfully causes the removal, detention or confinement of another person, so as to interfere with that person's liberty is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-29 Indecent Exposure

(a) A person who willfully exposes his or her sexual organs to public view under circumstances in which he or she knows or should know such conduct is likely to offend others is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-30 Inhaling Toxic Vapors

(a) A person who inhales the vapors or fumes of paint, gas, glue or other toxic products for the purpose of becoming intoxicated is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-31 Interfering with an Officer

(a) A person who willfully prevents or attempts to prevent a police officer from effecting an arrest or from otherwise discharging his official duty by:

1. Creating a substantial risk of bodily harm to the officer or any other person; or

2. Employing means of resistance which justify or require substantial force to overcome, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-32 Joyriding

(a) A person who, without proper authority operates, or otherwise uses any vehicle not his own, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-33 Liquor Violation

(a) Any unlicensed person who possesses, sells, trades, transports or manufactures any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-34 Littering

(a) A person is guilty of an offense who intentionally:

1. Deposits, discards of, drops, or dumps any trash, garbage, debris or other refuse upon any land not their own, including but not limited to (i) public property, including a public highway, right-of-way, or property adjacent to such highway or right-of-way, (ii) private property without the written consent of the owner thereof or their authorized agent, (iii) surface waterways, (iv) riparian areas, or (v) any other tribally owned properties within the exterior boundaries of the Pueblo;

2. Permits any trash, garbage, debris or other refuse to be deposited, discarded, disposed of, dropped, or otherwise dumped from a vehicle which they are operating provided that if a violation of this subsection has been observed by any person, the owner or operator of the motor vehicle shall be presumed to be the person dumping the refuse or otherwise responsible for the dumping, though such presumption shall be rebuttable by competent evidence; or

3. Deposits, discards, disposes of, drops, or dumps any trash, garbage, debris, or any other refuse on any public, business, or tribal property in any manner other than by placing the refuse in a receptacle provided for the purpose by the responsible governmental, tribal, or business authorities.

(b) A person found guilty under this section may be sentenced to any one or any combination of the following penalties:

1. Imprisonment for a period not to exceed one year.

2. pay a fine of no less than three hundred dollars ($300) and not to exceed five thousand dollars ($5,000),

3. Pick up, clean up, and remove the refuse for proper disposal; and

4. Perform up to 100 hours of community service to clean trash, garbage, debris, or any other refuse, including providing labor for the Pueblo of Pojoaque Environment Department to assist with cleanup of waterways and other tribal areas.

(c) Uniform citation forms may be used for enforcement of this section.

M-35 Maintaining a Public Nuisance

A person who:

1. Endangers the health or safety of another; or

2. Interferes with the enjoyment or property of another, by willfully or negligently permitting a hazardous, unsightly or unhealthy condition to exist on property under his possession or control is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

(c) In addition to any penalty imposed under Paragraph (b) of this section, the Court shall order that the nuisance be abated within a reasonable time.

M-36 Misusing Property

(a) A person who, without proper authority, knowingly uses or damages any property not his own is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-37 Narcotics and Dangerous Drugs

Repealed on January 28, 2010.

M-38 Perjury

(a) A person who knowingly makes a false statement while under oath, or who induces another to do so, or who signs an affidavit knowing the same to be false is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-39 Possession of Marijuana

Repealed on January 28, 2010.

M-40 Prostitution

(a) A person who:

1. Solicits or practices prostitution; or

2. Knowingly provides, keeps, rents, leases or otherwise maintains any place or premises for the purpose of prostitution is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-41 Public Intoxication

(a) A person who appears in a public place while under the influence of alcohol, cannabis, toxic vapors or substances, the use or possession of which is prohibited under M-56 of Subpart M of this Code, not therapeutically administered, to the degree that he may reasonably endanger himself or other persons or property is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-42 Receiving Stolen Property

(a) A person who buys, receives, conceals or aids in concealing any property which he know or should know has been obtained by theft, extortion, fraud or other means constituting an offense under the provisions of this Code is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-43 Refusing to Aid an Officer

(a) A person who willfully refuses to assist a police officer:

1. In the lawful arrest of any person; or

2. In conveying a lawfully arrested person to the nearest place of confinement, when such assistance is reasonably requested is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-44 Removal or Destruction of Antiquities

(a) A person who, without proper authority, removes, excavates, injures or destroys any historic or prehistoric ruin or monument or any object of antiquity is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-45 Shoplifting

(a) A person who willfully takes possession of any goods offered for sale by any mercantile establishment without the consent of the owner or manager with the intent to convert such goods to his own use without paying for them is guilty of an offense.

(b) A person who willfully conceals or attempts to conceal any goods offered for sale:

1. On the person or among his belongings; or

2. On the person, or among the belongings of another, is presumed to have taken possession of such goods with the intent to convert them to his own use without paying for them.

(c) A police officer, merchant or merchant's employee who has reasonable cause to believe that a person has willfully taken possession of goods with the intent to convert them without paying for them may detain and interrogate the person in regard thereto in a reasonable manner and for a reasonable time.

(d) If a police officer, merchant or merchant's employee detains and interrogates a person pursuant to Paragraph (c) of this Section and the person thereafter brings civil or criminal action against the police officer, merchant or merchant's employee, based upon the detention and interrogation, such reasonable cause shall be a defense to the action, if the detention and interrogation were performed in a reasonable manner for a reasonable time.

(e) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-46 Theft

(a) A person who unlawfully takes or exercises control over property not his own, whether or not possession was originally obtained with consent of the owner, with the intent of permanently depriving the owner of the value or use of the property, for the benefit of himself or another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-47 Unlawful Burning

(a) A person who:

1. Willfully and unlawfully causes or attempts to cause damage to any property by fire or explosion;

2. Negligently causes damage to any property by fire or explosion; or

3. Sets fire to any forest, brush or grasslands, or sets a campfire with careless disregard for the spread or escape of such fire, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-48 Malicious Mischief

Any person who shall maliciously disturb, injure or may destroy livestock or other domestic animal, or other property shall be deemed guilty of malicious mischief and upon conviction thereof shall be sentenced to labor for a period not to exceed three hundred and sixty-five (365) days.

M-49 Driving Under the Influence of Intoxicating Liquor or Drug

(a) It is unlawful for any person who is under the influence of intoxicating liquor or drug to drive any vehicle within the exterior boundaries of the Pueblo of Pojoaque.

(b) Proof of intoxication shall be based upon evidence of intoxication presented to the Court.

(c) Sentencing: For purposes of this section, prior convictions include all driving under the influence (DUI) convictions from any other jurisdiction and also includes any deferred or conditionally discharged DUI convictions. Conditions of Tribal Court supervision may include the requirement that an interlock or similar device be installed in any vehicle driven by the defendant.

1. **First Offense:** A person convicted under this section may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000), or both.

2. **Second Offense:** A person convicted under this section for their second conviction for driving under the influence in any jurisdiction may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000), or both. In addition, Tribal Court may order supervision to extend up to two years for a second conviction for driving under the influence.

3. **Third Offense:** A person convicted under this section for their third conviction for driving under the influence in any jurisdiction may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000), or both. In addition, Tribal Court may order supervision to extend up to three years for a third conviction for driving under the influence.

4. **Fourth Offense:** A person convicted under this section for their fourth conviction for driving under the influence in any jurisdiction may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000), or both. In addition, Tribal Court may order supervision to extend up to five years for a fourth conviction for driving under the influence.

5. **Fifth and Subsequent Offense:** A person convicted under this section for their fifth or subsequent conviction for driving under the influence in any jurisdiction may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000), or both. In addition, Tribal Court may order lifetime supervision for a fifth or higher conviction for driving under the influence.

6. Five years or more from the date of conviction, a fifth or subsequent offender may apply to Tribal Court to modify or close supervision.

7. In addition to any other fine or fee that may be imposed or other condition of supervision, Tribal Court may order the offender to pay the costs of any court-ordered screening and treatment programs.

M-50 Possession of a Weapon While Under the Influence of Intoxicating Liquor or Drug

(a) It is unlawful for any person who is under the influence of intoxicating liquor or drug to carry a weapon while they are within the exterior boundaries of the Pueblo of Pojoaque.

(b) Proof of intoxication shall be based upon evidence of intoxication presented to the Court.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-51 Shooting in Residential Areas

(a) If there is probable cause of any person (Tribal Members or Non-Tribal Members) has fired a gun in the Residential areas of the Pueblo, the Chief of Police or a designated Tribal Police Officer shall apply to the Tribal Court for a search warrant in accordance with Subpart H-24(a)(3). Upon issuance of the warrant, Tribal Police shall execute the warrant and confiscate all guns (weapons) located at the premises consistent with Subpart H-24(a)(3)(B).

(b) Tribal Police may proceed without a warrant if circumstances meet any exception to the warrant requirement under H-24(a)(4) (search incident to arrest; consent; probable cause to believe the person may be armed or dangerous; vehicle search; risk of evidence destruction), as authorized by those provisions. Tribal Police may also act under the traditional authority described in section H-24(a)(5) if applicable.

(c) The Chief of Police shall determine whether any confiscated gun has been fired recently. If the Chief of Police determines that a gun has been fired recently, the person(s) shall be immediately excluded from the Pueblo and shall remain excluded until a court hearing is held. The decision issued by the Judge shall be final and may not be appealed.

(d) The following penalties shall apply upon a finding that a gun was fired in violation of this Subpart:

1. 1st Offense – Five thousand dollars ($5,000) fine and one (1) year banned from the Pueblo.

2. 2nd Offense – Five thousand dollars ($5,000) fine and five (5) years banned from the Pueblo.

(e) Tribal Members shall also lose all Tribal benefits for the duration of the ban from the Pueblo.

(f) These provisions are non-discretionary and mandatory. No Pueblo member shall receive discretion from the Governor or any tribal official for violations of this Section.

M-52 Threats or Physical Harm to Elected or Appointed Officials

(a) Any person who threatens physical harm or commits an act of physical harm to an elected or appointed Pueblo of Pojoaque Tribal Official or a person conducting the official duties of the Pueblo of Pojoaque Tribal government shall be subject to this section.

1. An elected or appointed Pueblo of Pojoaque Tribal Official is defined as any person who is elected or appointed by the Pueblo of Pojoaque General Council or Tribal Council to carry out duties on behalf of the Pueblo of Pojoaque.

2. A person conducting the official duties of the Pueblo of Pojoaque Tribal Government is defined as any person who is appointed by the Pueblo of Pojoaque to carry out official Tribal government duties.

3. A threat of physical harm is defined as any verbal or written threat of physical harm against a Tribal Official that is communicated to a third party.

4. An act of physical harm is defined as any intentional bodily touching of a Tribal Official that is intended to harm the Tribal Official.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

M-53 Act to Deter the Harboring of Fugitives and Criminals

(a) For the purposes of this Act, a fugitive is defined as a person subject to an active arrest or bench warrant.

(b) For the purposes of this Act, a criminal is defined as any person subject to Subpart P-8, Exclusion of Sexual Offenders; Subpart M-56, Dangerous Drugs Policy; or Subparts J-17 and M-57, Heroin Control Act.

(c) For the purposes of this Act, harboring is defined as having a fugitive or criminal within the home of the accused.

(d) For the purposes of this Act, harboring is also defined as withholding information as to the whereabouts of a fugitive or criminal when questioned by a tribal law enforcement officer during a criminal investigation seeking the fugitive or criminal.

(e) The Tribal Court may sentence any Native American who harbors a fugitive or criminal to a maximum of three hundred and sixty-five (365) days of incarceration and/or a five thousand dollar ($5,000) fine.

(f) The Tribal Court may exclude any Native American who harbors a fugitive or criminal from the Pueblo of Pojoaque for up to one (1) year.

(g) The Tribal Court may exclude any non-Indian who harbors a fugitive or criminal from the Pueblo of Pojoaque for a period to be determined by the Tribal Court. The exclusion may be permanent.

(h) All searches and seizures conducted by tribal law enforcement officers while searching for a fugitive or criminal shall strictly comply with Subpart H-24.

(i) If the Tribal Court finds that a tribal law enforcement officer has violated Subpart H-24 while enforcing this Act, the Tribal Court may suppress any evidence found during the illegal search and seizure and/or impose a monetary fine against the individual tribal police officer.

M-54 Disenrollment Policy for Enrolled Members Convicted of Trafficking

(a) For the purposes of this Section,

1. "Trafficking in Illegal Drugs" is defined as a criminal conviction in any Tribal, Federal, or State Court for trafficking, selling, or intending to sell illegal drugs.

2. "Illegal Drugs" is defined as any drug, the possession of which is prohibited by Federal law. "Illegal drugs" is also defined as any legal drug, the possession of which is illegal when it is not prescribed by an authorized, licensed physician.

(b) Upon evidence of conviction of "Trafficking in Illegal Drugs," the Tribal Secretary shall report to the Tribal Council that the Pueblo of Pojoaque enrolled Member is disenrolled and excluded from the Pueblo of Pojoaque for life.

(c) The disenrollment shall become effective the day of the conviction.

M-55 Trafficking in Illegal Drugs

(a) "Trafficking" is defined as the intention to sell illegal drugs or the selling of illegal drugs.

(b) "Illegal drugs" is defined as any drug, the possession of which is prohibited by Federal law. "Illegal drugs" is also defined as any legal drug, the possession of which is illegal when it is not prescribed by an authorized, licensed physician. "Illegal drugs" does not include cannabis cultivated, produced, processed, manufactured, stored, tested, researched, labeled, transported, couriered, distributed, purchase, sold, served, possessed, or used in accordance with the Cannabis Code.

(c) "Intention to sell illegal drugs" may be determined when there are indicators of sales of illegal drugs. Indicators may include, when found in combination with the illegal drugs, that there are sufficient quantities of illegal drugs for sale purposes, amount of cash indicating the intent to sell, weapons, or paraphernalia such as scales, baggies or written notations. The Tribal Judge shall determine whether the indicators are sufficient to indicate an intent to sell illegal drugs.

(d) "Sale" is defined as the exchange of cash, or bartering, for illegal drugs.

(e) The penalties for trafficking in illegal drugs may include imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

(f) The Tribal Police may petition the Tribal Court for forfeiture of any indicators of trafficking.

M-56 Dangerous Drugs Policy

(a) "Dangerous drugs" are defined as any drug, the possession of which is prohibited by Federal and State law. "Dangerous drugs" also includes any legal drug, the possession of which is illegal when it is not prescribed by an authorized, licensed physician. "Dangerous Drugs" does not include cannabis cultivated, produced, processed, manufactured, stored, tested, researched, label, transported, couriered, distributed, purchased, sold, served, possessed, or used in accordance with the cannabis code.

(b) Any person who illegally possesses, uses, abuses, gives away, manufacturers or sells dangerous drugs is guilty of a criminal offense.

(c) Any person who harbors a person who possesses, uses, abuses, gives away, manufacturers or sells dangerous drugs is guilty of a criminal offense.

(d) Any person who illegally possesses paraphernalia used in the manufacturing, injection, ingestion, smoking or introduction into the body of a dangerous drug is guilty of a criminal offense.

(e) Any person arrested for possession, using, abusing, giving away, manufacturing, or selling dangerous drugs or paraphernalia used in relation to dangerous drugs shall undergo mandatory drug testing at the time of arrest. Law enforcement shall present such findings to the Court and Tribal Officials at the time of arraignment.

(f) Any person who is convicted under this Section may be sentenced to a maximum of three hundred and sixty five (365) days of incarceration or a five thousand dollar ($5,000) fine, or both and may be excluded by the Tribal Court from entering the exterior boundaries of the Pueblo of Pojoaque.

(g) The Tribal Council shall consider in sentencing that the Tribal Council prefers that offenders are sentenced to treatment when the offender shows remorse and is willing and ready to undergo treatment.

(h) Upon evidence of conviction of "Trafficking in Illegal Drugs," the Tribal Secretary shall report to the Tribal Council that the Pueblo of Pojoaque enrolled Member is disenrolled and excluded from the Pueblo of Pojoaque for life.

(i) The disenrollment shall become effective the day of the conviction.

M-57 Heroin Control Act

(a) The Pueblo of Pojoaque has a zero tolerance policy of heroin and intravenous use of illegal drugs. This policy includes civil and criminal prohibitions and adoption of medical treatment approaches to combat the problem to protect the community and families.

(b) The Heroin Control Act supersedes all prior conflicting provisions concerning heroin and intravenous use of illegal drugs that are contained in the Tribal Law and Order Code regulations and ordinances, lease agreements or employee handbooks.

(c) A copy of the Heroin Control Act of 2012 shall be made available to all enrolled Members of the Pueblo of Pojoaque.

(d) Heroin and Intravenous Use of Illegal Drugs.

1. Any person who buys, possesses, sells or uses heroin within the exterior boundaries of the Pueblo of Pojoaque shall be considered a threat to the public health, safety and welfare.

2. Any person who admits to or is arrested for heroin or intravenous use of illegal drugs within the exterior boundaries of the Pueblo of Pojoaque shall be considered a threat to the public health, safety and welfare and shall undergo mandatory drug testing at the time of arrest. Law enforcement shall present such findings to the Court and Tribal Officials at the time of arraignment.

3. Any person who is found guilty in any court of law of heroin or intravenous use of illegal drugs shall be considered a threat to the public health, safety and welfare.

4. Any Tribal Police Officer who suspects a person of heroin use or intravenous use of illegal drugs may petition the Tribal Court for scientific testing of the suspected user.

5. Any allegation of suspicion shall be supported by written and verified facts before scientific testing is ordered by the Tribal Court.

(e) Penalties. Any person who is a threat to the health, safety and welfare of the Pueblo of Pojoaque under the provisions of this Section shall be subject to the following penalties:

1. An Indian found guilty of violating this Section may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed five thousand dollars ($5,000), or both, per violation.

2. Exclusion from the exterior boundaries of the Pueblo of Pojoaque for a duration to be determined by the Tribal Court.

3. Immediate termination of employment and Tribal benefits for a duration to be determined by the Tribal Court.

4. The violator may be responsible for payment of treatment costs.

5. A neglected child adjudication of unlimited duration for any parent of an Indian child when the parent is a threat to the public health, safety and welfare under the provisions of this Section.

(f) Rescission of Penalties.

1. The Tribal Court shall provide a written Order to the person who is determined to be a threat to the public health, safety and welfare. The Order shall set out the conditions under which any of the penalties imposed may be rescinded.

2. In the case of neglected child adjudication, the parent has two (2) years in which to successfully comply with the Tribal Court's Order. If the parent has not successfully complied with the Tribal Court's Order within two (2) years, termination of parental rights shall be initiated by the Pueblo of Pojoaque Social Services Department. The two (2) years may be extended by the Tribal Court with a written justification for the extension.

M-58 Prohibited Cannabis Activities

(a) Any person who cultivates, produces, process, manufactures, stores, tests, researchers, labels, transports, couriers, distributes, purchases, sells, serves, gives away, possesses, or uses kind of it's not in accordance with the cannabis cold is guilty of a criminal offense

(b) Any person who distributes cannabis, whether buy sell or gift to a person under 21 years old except for distribution to a qualified patient or reciprocal patient who is at least 18 years old is guilty of a criminal offense

(c) Any person who knowingly allows a person under 21 years old to enter cannabis establishment is guilty of a criminal offense.

(d) Any person under 21 years old that uses or possesses cannabis except for a qualified patient or reciprocal patient who is at least 18 years old is guilty of a criminal offense.

(e) Any person who possesses more than two ounces of cannabis, sixteen grams of cannabis extract, seven grams of cannabis infused extract or cannabis concentrate for inhalation, or eight hundred milligrams of edible cannabis without proper authorization or licensed under the cannabis code or by the state of New Mexico is guilty of a criminal offense

(f) Any person who possesses drug paraphernalia is guilty of a criminal offense except for those authorized under the Cannabis Code to possess drug paraphernalia for the production processing, or sale of cannabis.

(g) Any person who consumes cannabis in a public place is guilty of a criminal offense.

(h) Any person who busily possesses or any amount of cannabis at a public place is guilty of a criminal offense.

(i) Any person who creates sells, or uses counterfeit qualified patient or reciprocal participant documentation is guilty of a criminal offense.

(j) Any person in a motor vehicle whether the driver or a passenger, that consumes cannabis in any manner, or possesses a cannabis product within the area of the vehicle normally occupied by the driver or a passenger, except for possession of a cannabis product in a container, receptacle, or package with an unbroken seal, is guilty of a criminal offense. possession of a cannabis product in the trunk or other area not accessible by driver shall not be guilty of a criminal offense.

(k) any person who is convicted under this section may be sentenced to a maximum of 365 days of incarceration or a five thousand dollar ($5000) fine, or both and may be excluded by the tribal court from entering the exterior boundaries of the pueblo.

(l) The Tribal Council shall consider in sentencing that the tribal council prefers that offenders are sentence to treatment with the offender shows remorse and is willing and ready to undergo treatment.

(m) It is a defense to an offense in Subpart M if a person is acting in accordance with the cannabis code, and rules and regulation issued by the Pueblo of Pojoaque Cannabis Commission.

M-59 Illegal Opioids and Stimulants Control Act

(a) Because of the increased use, possession, manufacturing, and distribution of opioids, methamphetamines, other stimulants, and illegal use of prescription drugs, the Pueblo of Pojoaque enacted this Act to replace the Heroin Control Act of 2012 (Section M-57). The Opioids and Stimulants Control Act (OSCA) includes civil and criminal court-mandated sanctions and treatment approaches for affected individuals and families and to protect the community.

(b) Definitions.

1. **Illegal Drug:** Any drug the possession of which is prohibited by federal and/or state law, with the exception of cannabis, which is legal pursuant to the Pueblo Law and Order Code. Illegal drugs include any lawfully prescribed drug that is not used as prescribed, such as by snorting or injecting. Illegal drugs also include any legal drug, the possession of which is illegal when not prescribed by a licensed physician.

2. **Opioids**: A class of drugs that include heroin and other opium products; synthetic opioids, including by not limited to substances such as fentanyl and carfentanyl; and prescription opioid pain relievers, including, but not limited to, oxycodone (OxyContin,

Percocet), hydrocodone (Vicodin), codeine, and morphine. Opioids include any natural or synthetic compound that is, or becomes, classified as an opioid.

3. **Stimulants**: A class of drug that includes amphetamines, methamphetamine, any amphetamine-related compound, such as Adderall, and cocaine and any cocaine derivatives such as crack cocaine. It also includes any synthetic stimulant compound that are illegal under federal law, such as "Bath Salts" (cathinones).

(c) The Illegal Opioids and Stimulants Control Act supersedes all prior conflicting provisions concerning possession, use, or sale of illegal drugs that are contained in the Tribal Law and Order Code regulations and ordinances, lease agreements or employee handbooks.

(d) A copy of the Illegal Opioids and Stimulants Control Act will be available to all enrolled Members of the Pueblo of Pojoaque and will be publicly available as part of the Law and Order Code.

(e) Threat to public health, safety, and welfare.

1. Any person who uses, possesses, buys, sells, gives away, or manufactures Illegal opioids or stimulants or unlawfully uses or sells prescription drugs within the exterior boundaries, or any trust land, of the Pueblo of Pojoaque is considered a threat to public health, safety and welfare.

2. Any person who admits to or is arrested for illegal opioid or stimulant use, possession, purchase, distribution, or manufacturing or illegal use or sale of prescriptions drugs within the exterior boundaries of the Pueblo of Pojoaque is considered a threat to public health, safety and welfare and may undergo mandatory drug testing at the time of arrest. Law enforcement or probation may present such findings to the Court and Tribal Officials.

3. Any person who is found guilty in any court of law of illegally possessing, using, manufacturing, or distributing opioids or stimulants shall be considered a threat to the public health, safety and welfare of the Pueblo.

4. Any Tribal Police Officer, Tribal Official, Probation Officer, or Family and Children's Services Staff who suspects a person of using illegal opioids or stimulants or the illegal use of prescription drugs may petition the Tribal Court for drug testing of the suspected user.

5. Any allegation of illegal use under this Section must be supported by articulable facts before testing is ordered by the Tribal Court.

(f) Criminal Offense. Any person over whom Tribal Court may exercise criminal jurisdiction who uses, possesses, buys, sells, gives away, or manufactures Illegal opioids or stimulants or unlawfully uses or sells prescription drugs within the exterior boundaries, or any trust land, of the Pueblo of Pojoaque is guilty of a criminal offense and will be deemed a threat to the public health, safety, and welfare of the community.

(g) Penalties. Any person over whom Tribal Court may exercise criminal jurisdiction convicted of violating this Section may be sentenced to imprisonment for a period not to exceed 365 days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

1. The Court may also exclude the violator from the exterior boundaries, or any trust land, of the Pueblo of Pojoaque for a duration to be determined by the Tribal Court.

2. If the violator is employed by the Pueblo or is a member of the Pueblo, the violator's eligibility for Tribal employment and all Tribal benefits, including any Tribal disbursements, will be immediately terminated for a duration to be determined by the Tribal Court.

3. The violator may be responsible for paying drug testing and treatment costs.

4. When the parent is determined to be a threat to public health, safety, and welfare under the provisions of this Section, for any child that is under Children's Court jurisdiction, Children's Court may adjudicate the child to be a neglected child or a child in needs of services for a duration to be determined by Children's Court.

(h) Deferral and Rescission of Penalties.

1. Tribal Court may defer penalties if the violator is willing to comply with court-imposed conditions, including participation in Path to Wellness Court or similar intensive Court-ordered supervision, substance use disorder treatment, and drug testing. The Court may impose conditions recommended by Tribal Police, Family and Children's Services, or other service provider.

2. The Tribal Court shall provide a written order to the person who is determined to be in violation of this Section. The order will set out the conditions under which any of the penalties imposed may be deferred or rescinded.

3. In the case of neglected child adjudication connected to a parent's violation of the Section, the parent has two (2) years in which to successfully comply with the Tribal Court's Order, including completion of Path to Wellness Court. If the parent has not successfully complied with the Tribal Court's Order within two (2) years, termination of parental rights should be initiated by Pueblo of Pojoaque Family and Children's Services pursuant to the Children's Code. The two (2) years may be extended by the Tribal Court with a written justification for the extension.

M-60 Crimes of Special Tribal Criminal Jurisdiction

The Pueblo of Pojoaque exercises criminal jurisdiction to the fullest extent possible under tribal, state, and federal law. The Pueblo here adopts the provisions of the Indian Civil Rights Act, 25 USC §1304, pertaining to expanded criminal jurisdiction over non-Indians who commit a covered crime in the Pueblo of Pojoaque. Indians and Non-Indians may be charged with the crimes in this subsection.

Other than for Obstruction of Justice or Assault of Tribal Justice Personnel (Sections M-60 (b) and (f)), if neither the defendant nor the victim is an Indian, the Pueblo may not exercise criminal jurisdiction until tribal jurisdiction is expanded under federal law.

Covered crimes in this subsection are (a) assault of tribal justice personnel; (b) child violence; (c) dating violence; (d) domestic violence; (e) obstruction of justice; (f) sexual violence; (g) sex trafficking; (h) stalking; and (i) violation of a protection order.

(a) Rights of Defendants Charged under this Subsection, in addition to rights enumerated under 25 US section 1302 (a)(6) of the Indian Civil Rights Act.

1. The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;

2. If the defendant cannot afford an attorney, the Pueblo will provide without charge the assistance of an appointed defense attorney, licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

3. The judge presiding over the criminal proceeding must have sufficient legal training to preside over criminal proceedings; and is licensed to practice law by any jurisdiction in the United States;

4. The criminal laws, rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges) of the Pueblo must be publicly available;

5. A record of the criminal proceeding, including an audio or other recording of the trial proceeding, must be maintained;

6. The right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.

7. The Right to Petition to Stay Detention

   A. Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Pueblo of Pojoaque and may petition Tribal Court to stay further detention pending the habeas proceeding.

   B. Tribal Court shall grant a stay if the Court finds that there is a substantial likelihood that the habeas corpus petition will be granted; and after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

8. Petitions for Writs of Habeas Corpus. After a defendant has been sentenced by Tribal Court, the defendant may file a petition for a writ of habeas corpus in a court of the United States under 25 USC §1303.

   When Tribal Court has ordered the detention of any person, it has a duty to timely notify in writing such person of their rights and privileges to petition for a writ of habeas corpus under 25 USC §1303.

9. Other Rights. All other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Pueblo to exercise special tribal criminal jurisdiction over the defendant charged with a covered crime under this subsection.

COVERED CRIMES

(b) Assault of Tribal Justice Personnel

1. Any person who uses, attempts to use, or threatens use of physical force against an individual authorized to act for, or on behalf of, the Pueblo or serving the Pueblo during, or because of, the performance or duties of that individual in—

   A. preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;

   B. adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;

   C. detaining, providing supervision for, or providing services for persons charged with a covered crime; or

D. incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime;

is guilty of Assault of a Tribal Justice Personnel.

2. Anyone who is convicted of a second or subsequent Assault of Tribal Justice Personnel or Law Enforcement Officer in any jurisdiction or commits Assault of Tribal Justice Personnel with a deadly weapon while she or he is in the lawful discharge of duties related to a covered crime is guilty of Aggravated Assault of Tribal Justice Personnel.

3. Sentencing.

A. Anyone convicted of Assault of Tribal Justice Personnel may be sentenced up to a maximum of 365 days of incarceration and/or $5,000.00.

B. Anyone convicted of Aggravated Assault of Tribal Justice Personnel may be sentenced up to a maximum of 3 years of incarceration and/or $15,000.00.

(c) Child Violence.

2. Any person who uses, threatens to use, or attempts the use of violence against a child is guilty of an offense.

3. Anyone who is convicted of a second or subsequent crime of child violence in any jurisdiction, or who inflicts great bodily harm against a child; assaults a child with a deadly weapon; or strangles a child is guilty of Aggravated Child Violence.

4. Sentencing

A. Anyone convicted of Child Violence may be sentenced up to a maximum of 365 days of incarceration and/or $5,000.00.

B. Anyone convicted of Aggravated Child Violence may be sentenced up to a maximum of 3 years of incarceration and/or $15,000.00.

5. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(d) Dating Violence.

1. Any person who commits an act of violence against someone he or she is or has been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship is guilty of an offense. Dating violence is defined as physical harm, bodily injury, or assault; or the infliction of fear that physical harm, bodily injury, or assault could occur momentarily; or terroristic threats; or, criminal sexual conduct.

2. Anyone who is convicted of a second or subsequent Dating Violence charge in any jurisdiction or who inflicts great bodily harm against the victim; commits Dating Violence with a deadly weapon; or strangles the victim is guilty of Aggravated Dating Violence.

3. Sentencing

   A. Anyone convicted of Dating Violence may be sentenced up to a maximum of 365 days of incarceration and/or $5,000.00.

   B. Anyone convicted of Aggravated Dating Violence may be sentenced up to a maximum of 3 years of incarceration and/or $15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(e) Domestic Violence.

1. Any person who commits physical harm, bodily injury, or assault; or, the infliction of fear that physical harm, bodily injury, or assault could occur momentarily; or, terroristic threats; or, criminal sexual conduct where the act of violence is committed by (A) a current or former spouse or intimate partner of the victim; (B) a person with whom the victim shares a child in common; (C) a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or (D) a person similarly situated to a spouse of the victim is guilty of Domestic Violence.

2. Anyone who is convicted of a second or subsequent Domestic Violence charge in any jurisdiction or who inflicts great bodily harm against the victim or commits strangulation or commits Domestic Violence with a deadly weapon is guilty of Aggravated Domestic Violence.

3. Sentencing

A. Anyone convicted of Domestic Violence may be sentenced up to a maximum of 365 days of incarceration and/or $5,000.00.

B. Anyone convicted of Aggravated Domestic Violence may be sentenced up to a maximum of 3 years of incarceration and/or $15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(f) Obstruction of Justice. Anyone who influences, obstructs, interferes, or impedes, or endeavors to influence, obstruct, or impede, the administration or due process of the laws of the Pueblo of Pojoaque, including any Tribal criminal proceeding or investigation of a crime is guilty of obstruction of justice.

Anyone convicted of Obstruction of Justice may be sentenced to incarceration for up to 365 days and/or fined up to $5,000.00.

(g) Sexual Violence.

1. Anyone who forces or manipulates someone else into an unwanted sexual act or contact without their consent, including in any case in which the victim lacks the capacity to consent to the act is guilty of sexual violence.

2. Anyone who (a) has a prior conviction for sexual violence in any jurisdiction; or (b) commits any type of sexual contact with a minor under the age of 17, except when the minor is 14-17 years old and there are 4 or fewer years age difference between the actors and all sexual action is consensual; or (c) uses any weapon or strangulation while committing sexual violence is guilty of Aggravated Sexual Violence.

3. Sentencing

A. Anyone convicted of Sexual Violence may be sentenced up to a maximum of 365 days of incarceration and/or $5,000.00.

B. Anyone convicted of Aggravated Sexual Violence may be sentenced up to a maximum of 3 years of incarceration and/or $15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders that are necessary for victim safety.

(h) Sex Trafficking.

1. Whoever knowingly recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act knowing, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described, or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, is guilty of a crime.

2. Anyone who is convicted of a second or subsequent sex trafficking charge in any jurisdiction or who inflicts great bodily harm against the victim or uses a deadly weapon in the course of sex trafficking is guilty of Aggravated Sex Trafficking.

3. Sentencing

   A. Anyone convicted of Sex Trafficking may be sentenced up to a maximum of 365 days of incarceration and/or $5,000.00.

   B. Anyone convicted of Aggravated Sex Trafficking may be sentenced up to a maximum of 3 years of incarceration and/or $15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(i) Stalking.

1. Anyone who stalks another is guilty of an offense. The term "stalking" means engaging in a pattern of conduct, without lawful authority, directed at a specific person that would cause a reasonable person— (A) to fear for the person's safety or the safety of others; or (B) to suffer substantial emotional distress.

2. Anyone who is convicted of a second or subsequent Stalking charge in any jurisdiction or who inflicts great bodily harm against the victim or commits Stalking with a deadly weapon is guilty of Aggravated Stalking.

3. Sentencing

   A. Anyone convicted of Stalking may be sentenced up to a maximum of 365 days of incarceration and/or $5,000.00.

B. Anyone convicted of Aggravated Stalking may be sentenced up to a maximum of 3 years of incarceration and/or $15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

(j) Violation of a Protection Order

1. Anyone who commits an act within the Pueblo, that violates a provision of a protection order is guilty of an offense, provided that the order— (i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (ii) was issued against the defendant; (iii) is enforceable by the Pueblo; and (iv) the issuing Court had proper jurisdiction over the parties and matter to issue the order of protection; and the restrained party had reasonable notice and opportunity to be heard to protect that person's right to due process. In the case of ex-parte orders, notice and opportunity to be heard must be provided within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

   The term "protection order" means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

2. Aggravated Violation of a Protection Order. Anyone who is convicted of a second or subsequent Violation of a Protection Order, in any jurisdiction, or who inflicts great bodily harm against the victim, or uses a deadly weapon in the commission of the violation of a protection order is guilty of Aggravated Violation of a Protection Order.

3. Sentencing

   A. Anyone convicted of Violation of a Protection Order may be sentenced up to a maximum of 365 days of incarceration and/or $5,000.00.

   B. Anyone convicted of Aggravated Violation of a Protection Order may be sentenced up to a maximum of 3 years of incarceration and/or $15,000.00.

4. At any stage of the criminal proceeding, the Tribal Court may issue orders of protection or other orders, including child custody orders, that are necessary for victim safety.

Subpart N Land, Livestock and Area Regulations

N-1 Cutting Green Timber without Permission

(a) A person who cuts or removes any green timber from lands within the Pueblo without written permission from the Governor or his representative is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-2 Branding Livestock of Another

(a) A person who:

1. Willfully brands or marks an animal with a brand or mark other than the recorded brand or mark of the owner of the animal; or

2. Willfully alters or obliterates any brand or mark on any animal not his own, with intent to convert the animal to his or some third person's use, without the consent of the owner is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-3 Failure to Control Livestock – Diseases or Parasites

(a) A person who willfully refuses to dip or treat any livestock under his ownership or control in accordance with orders or directions initiated by authorized range management personnel of the Pueblo or BIA is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-4 Game Violation

(a) A person who knowingly kills, attempts to kill or catches any deer or game animal within the Pueblo without the written permission from the Governor or his representatives is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

(c) "Game animal" shall mean any animal for which the Pueblo of Pojoaque requires a Tribal permit to hunt, kill or catch.

N-5 Grazing, Introduction without a Permit

(a) A person who:

1. Knowingly permits livestock under his ownership or control to graze upon lands within the Pueblo, without a valid permit issued by an authorized range management personnel; or

2. Willfully introduces or causes the introduction of any livestock into lands within the Pueblo not allocated, without a valid permit issued by authorized range management personnel is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-6 Making False Reports of Stock Owned

(a) A person who:

1. Knowingly makes a false report as to the total number of stock under his ownership or control; or

2. Willfully refuses to report the number of stock under his ownership or control, when required or requested by authorized range management personnel is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-7 Refusal to Brand or Mark Livestock

(a) A person who willfully refuses to brand or mark any livestock under his ownership or control, when required or requested by authorized range management personnel, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-8 Refusal to Dispose a Cull or Infected Animal

(a) A person who willfully refuses to dispose of or remove any cull or infected animal designated for disposal or removal by authorized range management personnel is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-9 Unauthorized Use of Range

(a) A person who willfully:

1. Grazes livestock under his ownership or control in the Pueblo in excess of the number allowed under his grazing permit; or

2. Refuses to graze livestock under his ownership or control in accordance with plans made public by authorized range management personnel, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-10 Unauthorized Fencing

(a) A person who fences any land knowing such fencing is not authorized by range management personnel is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-11 Violation of Regulation

(a) A person who willfully violates or refuses to comply with lawful orders and directions issued by the Secretary of the Interior or his representatives for the purpose of regulating the use or occupancy of the Pueblo is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty-five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both.

N-12 Other Actions not Precluded

The arrest, conviction or sentencing of any person for violating any provision contained in this Subpart shall not preclude impoundment, seizure or other authorized action taken by management personnel for the enforcement of regulation for, or of the Pueblo of Pojoaque.

N-13 Pit Bull and Staffordshire Terriers Regulations

(a) Pit Bull and Staffordshire Terrier breeds are considered dangerous.

(b) It is illegal for anyone living on the Pueblo to own, keep, or otherwise allow to enter within the exterior boundaries of the Pueblo, dogs of Pit Bull or Staffordshire Terrier breed.

(c) Pit Bull and Staffordshire Terrier Breeds owned by a Tribal Member and residing within the exterior boundaries of the Pueblo of Pojoaque as of September 13, 2012 may remain upon proof by the owner of the following conditions:

1. Microchip. Every Pit Bull or Staffordshire Terrier breed grandfathered in under this Section shall be microchipped at the owner's expense.

2. Registration. Every owner of a Pit Bull or Staffordshire Terrier breed shall register the dog with the Pueblo of Pojoaque Tribal Police or the Tribal Court. The registration should include the following:

A. Name, address and telephone number of the dog's owner;

B. The address where the dog is kept, if different from the owner's address;

C. A complete identification of the dog including the dog's sex, color and any other distinguishing physical characteristics;

D. A photograph of the dog; and

E. Proof of microchip.

(d) Failure to register a Pit Bull or Staffordshire Terrier breed as required by this Section shall be evidence that the dog is a newly acquired dog.

N-14 Animal Control Regulations

(a) Violations of animal control regulations are subject to criminal proceedings under Subpart M-16.

(b) Any Indian who:

1. Tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills any animal; or

2. Who unnecessarily fails to provide any animal with proper food or drink; or

3. Who allows any pet to run at large within the exterior boundaries of the Pueblo of Pojoaque shall be guilty of violating the Animal Control Regulations.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed three hundred and sixty five (365) days or to pay a fine not to exceed five thousand dollars ($5,000), or both. In addition, anyone who violates the Animal Control Regulations shall be liable for any costs accrued by the Santa Fe County Animal Control Unit.

(d) All pets must be confined to a fenced yard, tied or on a leash at all times. The owner of an animal is responsible for all damage or harm caused by the animal. It shall be no defense that an animal escaped its restraint.

(e) If a pet is loose, Tribal Police will be called and Animal Control will pick up the animal. The owner of the animal will be billed for all costs of picking up and boarding the animal. If needed, the impound fee will be paid by garnishment of wages.

N-15 Vicious Animal Ordinance

(a) It is unlawful for any person within the Pueblo of Pojoaque to keep or harbor a known vicious animal. Any attack by a vicious animal or any animal displaying traits of a vicious animal may be repelled by the use of reasonable force.

(b) A vicious animal includes any animal who bites, has bitten, or in any manner attacks or bites any person. A vicious animal also includes any animal which, unprovoked, kills or maims any animal owned by a person.

(c) Any animal shall not be deemed vicious if any animal bites, or in any manner attacks or bites any person when provoked by a person who trespasses upon the owner's premises.

(d) After a Tribal Court determination that an animal is vicious, the Tribal court shall order the animal removed immediately from the Pueblo of Pojoaque. The Tribal Court may also order the animal destroyed.

N-16 Land Assignments

(a) History and Applicability. This Subpart supersedes the Land Assignment Policy of 2017 and applies to all land of the Pueblo of Pojoaque ("Pueblo"), including but not limited to land within the Pueblo's historic land grant.

(b) Eligibility. Eligibility for land assignments is limited to enrolled members of the Pueblo ("Tribal members") over the age of 18, organizations and entities wholly owned by the Pueblo, and non-Pueblo owners of private land claims who require driveway ingress/egress to their parcels.

(c) Available Land. Land assignments may be made only if the land assignment involves the Pueblo's lands, the land is not subject to an existing land assignment or lease, and the proposed use of the land is consistent with the laws and policies of the Pueblo.

(d) Grant. A grant of a land assignment does not authorize a right of exclusive use to land and does not supersede the Pueblo's right to manage the land and its resources.

(e) Application Procedures.

1. Application. To obtain a land assignment, an eligible applicant must submit a written application to the Pueblo Realty Department, and pay applicable fees. An application must include: (A) the name of applicant; (B) the proposed term of the land assignment; (C) the address or location of the land that would be assigned; (D) the acreage of the land; (E) a map or survey plat of the land; (F) the proposed use(s) of the requested assignment; (G) information on any existing uses of the land; and (H) a cultural and environmental resources survey of the land if it will be disturbed by the proposed use(s) of the land.

2. Review. The application shall be reviewed by the Realty Department. After the Realty Department completes its review, it will forward the application to the Tribal Council with a recommendation to approve or deny the assignment.

3. Consideration. The Tribal Council may approve a land assignment within its discretion. The Tribal Secretary shall notify the applicant and the Realty Department in writing promptly after the Tribal Council's decision. If the application is denied, the Realty Department shall notify the applicant of the reason for denial. If the application is approved, a written land assignment shall be signed by the assignee and the Governor of the Pueblo.

(f) Term. The term for land assignments to enrolled members of the Pueblo shall be for the life of that member so long as the terms and conditions of the Land Assignment and this Subpart are met. The term for driveway ingress/egress land assignments to non-Pueblo owners of private land claims shall be for no longer than 35 years.

(g) Site Disturbances and Improvements. An assignee is responsible for the costs, surveying (by a New Mexico licensed surveyor), construction, management, operation, and maintenance of all utilities, infrastructure, and improvements within assigned land added by or on behalf of the assignee, subject to prior approval by the Realty Department for such construction. No improvement is permitted within rights of way or easements. An assignee, at its expense, shall remove all non-infrastructure improvements and restore the assigned land to its pre-construction condition within 90 days after expiration or termination of the assignment. The Pueblo may take possession and title to any such improvements not removed within that period.

(h) Residential Land Assignments. The Tribal Council may grant to a Tribal member up to one acre of land for a residential land assignment. No residential land assignments may be issued for Pueblo subdivisions or for modular construction in the main village. Any Tribal Member

who intends to rent or lease a residential land assignment must seek and receive prior written approval from the Tribal Council.

(i) Driveway Ingress/Egress Land Assignments. The Tribal Council may grant, to non-Pueblo owners of private land claims, up to one (1) acre for a driveway ingress/egress assignment. Any exceptions must be made by the Tribal Council.

(j) Fee for Driveway Ingress/Egress Land Assignments.

1. Non-pueblo owners of private land claims will be assessed the following fee for a driveway ingress/egress land assignment: The price per square foot of the fair market value of one acre of fee simple land with no improvements in the Pojoaque Valley multiplied by the square feet of the driveway ingress/egress land assignment.

Example Only:

$$\frac{\$100{,}000}{\text{Acre}} \times \frac{1 \text{ acre}}{43{,}560 \text{ square feet}} \times 1{,}000 \text{ square feet in driveway}$$

2. If there is more than one private land claim that is provided ingress/egress by the same driveway land assignment, then the following fee will be assessed: The price per square foot of the fair market value of one acre of fee simple land with no improvements in the Pojoaque Valley multiplied by the square feet of the driveway ingress/egress land assignment divided by the number of private land claims being provided ingress/egress by the land assignment.

(k) Agricultural, Commercial, Governmental, and Recreational Assignments. A land assignment may also be made for agricultural, commercial, governmental, or recreational purposes. The Realty Department and the Governor's Office shall be consulted to determine whether the prospective land is eligible for its desired purpose. The applicant must submit a business proposal with an application for a land assignment for agricultural, commercial, governmental, or recreational uses. Such a land assignment shall only be approved if the prospective benefit to the Pueblo is equal to the benefit that the Pueblo would realize if the Pueblo itself developed the proposed land assignment. Additionally, a land assignment under this section shall only be approved if the applicant can demonstrate that the applicant possesses the necessary skills and economic resources to develop the land and conduct the proposed use in a safe, legal, and financially responsible manner.

(l) General Standards.

1. Assignees are responsible for maintaining their land assignments and improvements on the land assignment in good condition in accordance with the Pueblo's Law and Order Code and all other applicable laws.

2. Land assignments are approved for land in "as is" condition. An assignee is responsible for any maintenance or remediation required so that the land assignment and improvements are in good condition within a reasonable period.

3. A land assignment shall be one contiguous parcel of land. This requirement shall not affect any previously granted non-contiguous parcels.

4. At all times during the term of an assignment, an assignee shall exercise reasonable diligence and care in using the assigned land, and shall diligently attempt to actively use all parts of the assigned land. An assignee shall not engage in, allow, or cause to be committed any unlawful, illegal, negligent, or nuisance activity, conduct, use, or waste at, of, or on the assigned land.

5. Roads, rights-of-way, and easements which run through a land assignment shall not be blocked and shall be open for public access.

6. Every land assignment shall be subject to this Section N-16 as well as the terms as set by the Tribal Council in the assignment, and the Pueblo's Law and Order Code and other applicable laws and requirements of the Pueblo.

7. The Pueblo may access and enter assigned land at any reasonable time so long as reasonable notice has been provided to the assignee and all applicable requirements and policies and procedures of Pueblo Departments have been followed in order to confirm the assignee's compliance with all applicable requirements.

8. If, at any time during the term of an assignment, the assigned land or any part thereof is taken or condemned under the laws of eminent domain, then the interest of the assignee in the part thereof taken shall cease and terminate.

9. Non-Pueblo owners of private land claims may also apply to the Bureau of Indian Affairs for a right-of-way for driveway ingress/egress pursuant to 25 CFR Part 169 and any future federal rules or regulations that govern grants of rights-of-way across Indian Land in lieu of acquiring a land assignment for such ingress/egress. The same fee calculations as stated in Section (j) of this Subpart will be used to determine fees for a right-of-way for driveway ingress/egress.

(m) Transfers. The Tribal Council must approve any transfer of a land assignment, whether by sub-assignment or otherwise, unless stated otherwise herein. The Tribal Secretary shall notify the Realty Department of any approval or denial of a transfer. However, when a lender forecloses on a loan or mortgage of a private land claim, the driveway ingress/egress land assignment shall automatically transfer to the foreclosing institution upon issuance of the final decree of the foreclosure action. A representative of the foreclosing institution must give written notice of the transfer to the Realty Department within thirty (30) days of the issuance of the final decree. Also, when an existing owner of a private land claim transfers ownership of the private land claim, the driveway ingress/egress land assignment shall automatically

transfer to the new owner of the private land claim. The new owner must give written notice of the transfer to the Realty Department within thirty (30) days of closing.

1. When a tribal member passes away, the Tribal Court shall have probate jurisdiction over a land assignment transfer and, based on findings made during the probate proceedings, provide a recommendation for the disposition of the land assignment which must be ratified by the Tribal Council.

2. Living tribal members who would like to transfer land during their lifetime to another tribal member must seek and receive approval from the Tribal Council.

(n) Encumbrances. At no time may a land assignment be encumbered by a mortgage, lien, loan, or in any manner without prior written approval from the Tribal Council.

(o) Possibility of Reverter (Does not apply to driveway ingress/egress land assignments). Assignments not developed or used for the purpose for which assigned within two years after the effective date shall automatically revert back to the Pueblo and may be reassigned. Each Pueblo member receiving a land assignment will be given written notice of this possibility of reverter and will be made aware that a review will take place at the end of the two-year time period to see if the land has been developed or used for the purpose for which it was assigned. The two-year time limit will start to run from the date that the Tribal Council approves of such land assignment.

1. Extension Requests. Any Pueblo member who has been granted a land assignment can make a formal written request through the Realty Department to the Tribal Council for an extension of time beyond the two-year time limit for the purpose of developing or using the land for which it was assigned. The request must be made prior to the expiration of the two-year time limit in order to be considered. Any extension that is granted will only be for a two-year period beyond the original development period.

2. Final Decisions. Once the Tribal Council has reviewed a land assignment situation and has determined that the person to whom the land was assigned did not comply with the requirement for development or use, and they determine that the land has reverted back to the Pueblo, that decision is final.

(p) Modification and Termination.

1. Modification. The Tribal Council may modify the size of or conditions for a land assignment without the consent of the assignee when necessary for public purposes.

2. Termination. The Tribal Council may terminate a land assignment if the Tribal Council determines that a land assignment was granted in error or an assignee fails to comply with the terms of the assignment.

Land Assignments effective on January 12, 2017, prior to the adoption of the Pueblo of Pojoaque Land Assignment Policy of 2017 remain in effect.

Section N-16 Land Assignments shall become prospectively effective as of February 8, 2018.

N-17 Farm Animals

(a) General.

1. Policy. It shall be the policy of the Pueblo to allow residents to own farm animals on the Pueblo, subject to the restrictions and regulations in this Subpart.

2. Purpose. The purposes of this Subpart are to provide regulations to protect the health and safety of the community and the environment; to control the regulation of farm animals; to encourage responsible and humane treatment of farm animals; and to delineate the responsibilities of farm animal owners within the exterior boundaries of the Pueblo.

3. Scope. This Subpart is applicable to all farm animals within the exterior boundaries of the Pueblo of Pojoaque, subject to the following exceptions:

A. Bison Program. For purposes of this Subpart, bison managed by the Pueblo of Pojoaque Bison Program are not to be considered farm animals.

B. Grandfathered Animals. Farm animals that are located on the Pueblo prior to June 21, 2018, will be allowed to remain on the Pueblo, regardless of the areas in which the animals are currently housed, and owners are exempt from compliance with the limitation restrictions listed in Section (d)(1). Owners of grandfathered animals must adhere to all other applicable regulations in this Subpart.

4. Regulation and Oversight. The regulation of farm animals on the Pueblo of Pojoaque is subject to the exclusive jurisdiction of the Pueblo and its laws.

A. The Farm Animal Control Board is hereby created as a regulatory body of the Pueblo of Pojoaque. The Farm Animal Control Board shall meet regularly, and consists of five (5) members appointed by the Tribal Council. The term of each member shall be for three (3) years. The Board is vested with the powers and duties to administer and enforce all rules and regulations pertaining to this Subpart, including the authority to create additional regulations consistent with this Subpart, and to take enforcement action for noncompliance with this Subpart.

B. Members of the Farm Animal Control Board shall recuse themselves from decisions specifically involving farm animals owned by that Board member or a member of their immediate family.

C. This Subpart shall in no way restrict the authority of the Tribal Council or the Pueblo of Pojoaque Police Department to enforce tribal law, or to respond to public safety issues.

5. General Rules. Permitted farm animals are allowed in designated areas only. Farm animals shall not be allowed in designated housing areas, with the exception of poultry and fowl. No person shall keep farm animals on tribal or private property in any manner that creates a public nuisance.

(b) Definitions.

1. "Farm Animal" means those animals commonly associated with a farm or performing work in an agricultural setting. This includes horses, cattle, sheep, poultry, fowl, swine, goats, bees and other animals associated with a farm, ranch, or stable.

2. "Owner" means any person, entity, organization, or department possessing, harboring, keeping, or having control or custody of a farm animal.

(c) Permits. All owners must obtain a grazing permit from the Realty office. Permits will designate areas allowed for grazing. Owners must also sign a liability agreement, which will be kept on file with the Farm Animal Control Board.

(d) Regulation of Animals.

1. Limits. Households may not own more farm animals than what is allowed on the Farm Animal Control Board's Space and Housing Guidelines for Fully Mature Animals.

2. Identification. All farm animals shall be branded, tattooed, tagged, marked, or documented. Determining an appropriate method of identification will depend on the type of farm animal. The Farm Animal Control Board may implement a tagging system.

3. Vaccinations. Owners must ensure that all farm animals receive proper vaccinations, and are kept in good health. In general, farm animals that will be consumed are not required to be vaccinated. Owners shall notify the Farm Animal Control Board if farm animals will be consumed. All injured or diseased farm animals shall receive adequate veterinary care to relieve pain, suffering, and to prevent the spread of disease. Owners are responsible for ensuring sick animals receive the care they need, and for paying all associated costs. The Farm Animal Control Board will request that owners provide proof of vaccinations or other medical records when needed.

4. Food and Water. It shall be the responsibility of owners to provide farm animals with food and water. All farm animals shall be provided with adequate feed and fresh

water to maintain health, weight and vigor consistent with healthy livestock, poultry, or other farm animals, and good animal husbandry.

5. Nuisance. It shall be unlawful for any owner to allow his farm animal to make excessive noise and thereby disturb the peace of others. Any person whose rest and peace has been disturbed by the excessive noise or odor of any animal shall have the right to file a complaint with the Farm Animal Control Board against the owner of such farm animal. Individuals should first attempt to resolve the matter peacefully before filing formal complaints.

(e) Regulation of Facilities and Grazing Areas. In addition to following the requirements listed in the Farm Animal Control Board's Space and Housing Guidelines for Fully Mature Animals, all pet owners must abide by the regulations below.

1. Separation. Animals housed in the same primary enclosure must be compatible. Animals shall not be housed near animals that interfere with their health or cause them discomfort.

2. Facilities. All facilities must be constructed of such material and of such strength as appropriate for the farm animals involved. The indoor and outdoor housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

A. Shelter from sunlight. When sunlight is likely to cause overheating or discomfort of farm animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.

B. Shelter from inclement weather. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided for all farm animals kept outdoors to afford them protection and to prevent discomfort to such animals. Individual animals shall be acclimated before they are exposed to the extremes of the individual climate.

3. Space. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each farm animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns. Owners shall not tether or confine any covered farm animal, for all or the majority of any day, in a manner that prevents such animal from lying down, standing up, fully extending his or her limbs, or turning around freely.

4. Fencing. All grazing areas must be enclosed by a perimeter fence that is of sufficient height to keep farm animals in. Fencing must provide effective and

customary containment and security measures. Owners are responsible for building and maintaining fencing.

5. Sanitation. Facilities and grazing areas shall be kept clean and in good repair in order to protect farm animals from injury and illness. All facilities for the keeping of farm animals shall be in good repair and of adequate design to avoid injury or the development and spread of disease.

A. Pest Control. All farm animal facilities shall be maintained to minimize insects and rodents.

B. Food Storage. Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Food, and food receptacles, if used, shall be placed so as to minimize contamination. Food receptacles shall be kept clean and sanitary at all times. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

C. Odors. It shall be the owner's responsibility to maintain all farm animal pens, corrals and property in a sanitary manner so as to prevent noxious or offensive odors that otherwise endanger the health and welfare of the inhabitants of the Pueblo. Farm animal excrement shall be properly disposed of and shall not be allowed to accumulate in amounts that cause unreasonable noxious odors.

D. Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. Accumulations of trash and waste shall be placed in designated areas and cleared as necessary to protect the health of the animals and the community.

6. Environment. All grazing must be conducted in accordance with current tribal land management practices. No farm animals shall be permitted to overgraze or to access areas to such an extent that it substantially degrades the water quality or vegetation in the vicinity.

(f) Enforcement.

1. Liability. Owners shall be responsible for the actions of their farm animals, including any damages caused by the animals. All owners must sign a liability agreement. Individuals who refuse to sign an agreement will be subject to enforcement action, and will not be allowed to obtain new farm animals. The Pueblo of Pojoaque (or any Pueblo entity) is not responsible for any actions caused by farm animals. The Pueblo of Pojoaque (or any Pueblo entity) is not responsible for any theft, injury, or harm incurred by any farm animal.

2. Inspection. The Farm Animal Control Board will conduct inspections to ensure compliance with this Subpart. The Farm Animal Control Board will provide notice of regularly scheduled inspection visits, and also reserves the right to conduct inspections without notice in cases of emergency. Inspections may include investigation of farm animals, permits, facilities, grazing areas, etc. The Animal Control Board will refer any suspected animal cruelty violations to the Pueblo of Pojoaque Police Department.

3. Administrative Remedies. The Farm Animal Control Board may issue citations or take other enforcement action for noncompliance with this Subpart. Violations of the rules and regulations in this Subpart may result in fines, revocation of permits, or other penalties, up to and including confiscation of animals. If animals are confiscated, owners will have the right to an administrative hearing before the Farm Animal Control Board.

4. Court Actions and Jurisdiction. The Farm Animal Control Board or its designee is authorized to file suit to enforce the provisions of this Subpart. In most cases, the Board will attempt to resolve issues through administrative proceedings, but the Board reserves the right to contact Tribal Police and/or file court actions without first conducting administrative proceedings. Any court proceedings concerning this Subpart shall be subject to the exclusive jurisdiction of the Pueblo of Pojoaque Tribal Court.

Subpart O Traffic Violations

O-1 New Mexico State Motor Vehicle Code Incorporated

(a) A person who violates any of the provisions of the New Mexico State Motor Vehicle Code, as amended to the date of the offense, is responsible for committing a civil offense.

(b) A person found guilty under this section may be ordered to pay the fine listed in the New Mexico State Motor Vehicle Code for that offense, as amended to the date of the offense.

(c) Incorporation of the New Mexico State Motor Vehicle Code does not confer any criminal jurisdiction to the Tribal Court over non-Indians and any non-Indian person found guilty under this section shall only be responsible for committing a civil offense.

O-2 Enactment of the Civil Traffic Code

(a) The civil traffic code ("Traffic Code") applies to any person—Indian or Non-Indian—within the exterior boundaries of the reservation. The Pueblo of Pojoaque Tribal Police are authorized to administer and enforce the Traffic Code on the Pueblo.

(b) The Tribal Police may enforce the Traffic Code by stopping a vehicle and offering the driver or occupant the option of electing to pay the fine as provided by the New Mexico Motor Vehicle Code, as amended to the date of the offense, for the commission of prohibited activities as reflected on a written citation, or if the person declines to elect to pay the fee, issue a notice for a person to appear in Tribal Court.

(c) The Tribal Police may notify in writing the insurance carrier of any person who is cited for committing an act or omission prohibited by the Traffic Code and who fails to properly pay such citation within thirty (30) days or timely appear in Tribal Court as requested.

O-3 Reservation of Civil Jurisdiction in Highway Construction Rights of Way

(a) The Tribal Council authorizes and accepts State Highway Right of Way Applications.

(b) All such agreements concerning highway rights of way shall include a Special Terms and Provisions clause, which shall read as follows:

The safety and protection of visitors passing through the Pueblo is paramount. To that end, the Pueblo expressly retains its civil jurisdiction over the right-of-way, except, for consideration paid to the Pueblo, the Pueblo expressly grants to the State Highway and Transportation Department the exclusive right to regulate the following in this right-of-way. (1) highway design, (2) highway construction, (3) highway maintenance, (4) management of access and driveway permits, (5) accommodation of utilities, (6) installation of traffic control devices, traffic safety measures, and posting of speed limits, (7) motor vehicle regulations in size, weight and licensing, (8) setting of speed limits, (9) toll roads, subject to federal law, and (10) road closures, subject to federal law, and other permits to use the right-of-way.

The Pueblo may temporarily or partially close the highway to be constructed on the easement to be granted by this Agreement for religious and tribal ceremonies by applying to the Department for a permit to use the right of way for non-highway purposes. The Department shall not unreasonably withhold such permission so long as the Pueblo meets the requirements of such procedures and there are no public safety problems remaining.

O-4 Prohibiting the Use of Jake Brakes

The use of Jake Brakes is prohibited within the Pueblo of Pojoaque boundary.

O-5 All-Terrain Vehicles (ATVs), Motorbikes and Off-Highway Vehicles

(a) All-Terrain Vehicles (ATVs), Motor Bikes and Off-Highway Vehicles (e.g., dune buggies) are banned in residential and business areas within the exterior boundaries of the Pueblo of Pojoaque without prior permission from the Tribal Council.

(b) Go-Karts are not considered "off-highway" vehicles and are allowed on the Pueblo as long as the proper rules are abided when driving or riding in them (e.g., persons under the age of 18 years are required to wear a safety helmet and Go-Karts may be operated adjacent to a road way, as long as the speed does not exceed the speed limit of 15 mph).

(c) First offense: Five hundred dollar ($500) fine and impoundment of vehicle
Second offense: One thousand dollar ($1,000) fine and confiscation of vehicle

O-6 Highway Construction Ordinance to Double Civil Traffic Fines

Any civil traffic violations occurring within posted highway construction areas are subject to a doubling of the civil traffic violation fines as approved by the Tribal Council.

O-7 Highway Safety Corridor Fines for State Road 502

The segment of State Road 502 within the exterior boundaries of the Pueblo of Pojoaque is recognized as a State of New Mexico Highway Safety Corridor. All Tribal Law and Order civil traffic citation fines shall be doubled within this Highway Safety Corridor.

O-8 Confiscation of Unregistered/Uninsured Motor Vehicles

(a) No driver shall permit the operation of an unregistered motor vehicle within the exterior boundaries of the Pueblo of Pojoaque, unless the vehicle has been exempted from the provisions of this Ordinance by the Tribal Council.

(b) No driver shall operate an uninsured motor vehicle within the exterior boundaries of the Pueblo of Pojoaque, unless the vehicle has been exempted from the provisions of this Ordinance by the Tribal Council.

(c) If the Pueblo of Pojoaque Tribal Police finds a driver operating an unregistered and uninsured motor vehicle, the Tribal Police shall immediately have the vehicle towed or driven to the Tribal Police impound lot where the vehicle shall remain until a Tribal Court hearing.

(d) If the offender does not provide proper registration and insurance during the Tribal Court hearing, the Tribal Court may allow the offender an extension in order to provide proper registration and insurance.

(e) If, sixty (60) days after the confiscation, the driver or owner of the vehicle does not claim the vehicle, or does not appear at a scheduled Tribal Court hearing, and the vehicle is not reported as stolen, the vehicle shall be considered abandoned.

(f) The Tribal Court shall forward a report of all abandoned vehicles for the Tribal Council's disposition.

O-9 Stopping, Standing and Parking Ordinance

This Stopping, Standing, and Parking Ordinance is adopted to regulate the stopping, standing, or parking of a vehicle within the exterior boundaries of the Pueblo of Pojoaque where such activity may impede traffic or cause safety concerns. Additionally, the Pueblo of Pojoaque adopts, and incorporates by reference, the City of Santa Fe New Mexico Uniform Traffic Ordinance parking fines and any subsequent amendments to those fines. This ordinance applies to any person—Indian or Non-Indian within the exterior boundaries of the reservation. A person who violates any of the provisions of this ordinance, and any subsequent amendments, has committed a civil offense and may be ordered to pay the fine listed in the City of Santa Fe Uniform Traffic Ordinance for that offense, as amended to the date of the offense. The Pueblo of Pojoaque Tribal Police, Tribal Police public safety aides, and security officers of the Pueblo's gaming enterprises are authorized to administer and enforce this ordinance within the exterior boundaries of the Pueblo.

(a) Definitions.

1. **STOP**. "Stop", when required, means complete cessation from movement.

2. **STAND OR STANDING**. "Stand or Standing" means the halting of vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

3. **PARK OR PARKING**. "Park or Parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading and unloading.

(b) Stopping Standing or Parking Prohibited in Specified Places.

1. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict

with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places: (1) on a sidewalk; (2) in front of a public or private driveway; (3) within an intersection; (4) within fifteen feet of a fire hydrant; (5) on a crosswalk; (6) within twenty feet of a crosswalk at an intersection; (7) within thirty feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a street; (8) between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the end of a safety zone, unless the Pueblo indicates a different length by signs or markings; (9) within fifty feet of the nearest rail of a railroad crossing; (10) within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy- five feet of said entrance, when properly signposted; (11) alongside or opposite any excavation or obstruction when stopping, standing or parking would obstruct traffic; (12) on the street side of any vehicle stopped or parked at the edge or curb of a street; (13) upon any bridge or other elevated structure upon a street or within a street tunnel; (14) at any place where official signs prohibit stopping; (15) on any railroad track; (16) between a curb and sidewalk or between a curb or lateral line of a roadway, and the adjacent property line; (17) in any place that is not specifically striped or signed for parking in a parking lot; (18) across any demarcation of the boundaries of a parking space; or (19) in any manner such that the vehicle is not entirely within the area demarcated for the parking of a vehicle of the parking space.

2. No person shall move a vehicle not lawfully under his control into any such prohibited area or a distance away from a curb that is unlawful.

(c) Additional Parking Regulations.

1. Except as otherwise provided in this ordinance every vehicle stopped or parked upon a street where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.

2. Except when otherwise provided in this ordinance, every vehicle stopped or parked on a one-way street shall be so stopped or parked parallel to the curb or edge of the street with its right-hand wheels within 18 inches of the right-hand curb or edge of the street or its left-hand wheels within 18 inches of the left-hand curb or edge of the street.

(d) Parking in Alleys.

No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than 10 feet of the width of the alley for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property.

(e) All-Night Parking Prohibited.

No person shall park a vehicle on any street in a non-residential area for a period of time longer than 30 minutes between the hours of 2:00 A.M. and 5:00 A.M. of any day.

(f) Parking for Certain Purposes Prohibited.

No person shall park a vehicle on any street for the principal purpose of:

1. Displaying the vehicle for sale;

2. Advertising;

3. Washing, greasing or repairing the vehicle except repairs necessitated by emergency; or

4. Storage of such vehicle. For the purpose of this section, a vehicle shall be deemed to have been left on the street for the principal purpose of storage when that vehicle has been standing in one place for a continuous period of more than 72 hours. This section shall apply to a vehicle that is left standing in front of its owner's residence only when the vehicle does not have a license plate or has an expired license plate.

(g) Parking Adjacent to Schools Prohibited.

1. The Pueblo of Pojoaque tribal administrator may erect signs indicating no parking on either or both sides of any street adjacent to any school property when parking would, in its opinion, interfere with traffic or create a hazardous situation.

2. When official signs are erected indicating no parking on either side of a street adjacent to any school property as authorized in this section, no person shall park a vehicle in any such designated place.

(h) Parking Prohibited on Narrow Streets.

1. The Pueblo of Pojoaque tribal administrator, in coordination with the Tribal Works Director, may erect signs indicating no parking on any street when the width of the street does not exceed 24 feet or no parking upon one side of the street as indicated by such signs when the width of the street does not exceed 32 feet.

2. When official signs prohibiting parking are erected on narrow streets as authorized in this section, no person shall park a vehicle on any such street in violation of the sign.

(i) Standing or Parking on One-Way Streets.

1. The Pueblo of Pojoaque tribal administrator, in coordination with the Tribal Works Director, may erect signs on the left-hand side of any one-way street to prohibit the standing or parking of vehicles.

2. When such signs are in place, no person shall stand or park a vehicle on such left-hand side in violation of any such sign.

(j) Standing or Parking on Divided Streets.

1. In the event a divided street includes two or more segments for vehicular traffic, and traffic is restricted to one direction on any such segment, no person shall stand or park a vehicle on the left-hand side of the one-way segment unless signs are erected to permit such standing or parking.

2. The Pueblo of Pojoaque tribal administrator, in coordination with the Tribal Works Director, may determine where standing or parking may be permitted on the left-hand side of any such one-way portion of a divided street and to erect signs giving notice thereof.

(k) No Stopping, Standing or Parking near Hazardous or Congested Places.

1. The Pueblo of Pojoaque tribal administrator, in coordination with the Tribal Works Director, may determine and designate by proper sign places at intervals not exceeding 100 feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

2. When official signs are erected at hazardous or congested places as authorized in paragraph A, no person shall stop, stand or park a vehicle in any such designated place.

(l) Stopping, Standing or Parking Restricted or Prohibited on Certain Streets.

1. The provisions of this section prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device.

2. The provisions of this section imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

3. The Pueblo of Pojoaque tribal administrator, in coordination with the Tribal Works Director, may impose restrictions or prohibitions on standing, stopping or parking and they shall apply as follows:

A. When signs are erected prohibiting parking at all times on certain streets, no person shall park a vehicle at any time upon any of the streets so designated;

B. When signs are erected in each block giving notice that stopping, standing or parking is prohibited during certain hours on certain streets, no person shall stop, stand or park a vehicle between the hours specified on the sign on any day, except Sundays and public holidays, on any of the streets so designated; or

C. When signs are erected in each block giving notice that parking time is limited on certain streets, no person shall park a vehicle longer than the time indicated on such signs between the hours of 8:00 A.M. and 6:00 P.M. of any day, except Sundays and public holidays, on any of the streets so designated.

4. Whenever by this or any other ordinance of the Pueblo of Pojoaque, any parking time limit is imposed or parking is prohibited on designated streets, it is the duty of the Pueblo of Pojoaque tribal administrator to erect appropriate signs giving notice of the restrictions or limitations.

(m) Angle Parking and Permits for Loading or Unloading at an Angle to the Curb.

1. The Pueblo of Pojoaque tribal administrator, in coordination with the Tribal Works Director, may determine upon what streets angle parking is permitted and shall mark or sign such streets:

A. The Pueblo of Pojoaque tribal administrator in coordination with the Tribal Works Director may permit angle parking on any street, except that angle parking shall not be permitted on any federal-aid or state highway unless the state highway commission has determined by resolution or order entered in its minutes that the street is of sufficient width to permit angle parking without interfering with the free movement of traffic;

B. Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive on the left side of the street; and

C. On those streets which have been signed or marked for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the street indicated by signs or makings.

2. The Pueblo of Pojoaque tribal administrator may issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of the permit:

A. The permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to the permit holder the privilege stated in the permit and authorized in the ordinance; and

B. No permittee or other person shall violate any of the special terms or conditions of a permit.

(n) Stopping, Standing or Parking Outside of Business or Residence Districts.

1. Upon any street outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the street when it is practicable to stop, park , or leave such vehicle off the paved or main-traveled part of the street. In the event that conditions make it impracticable

to move such vehicle from the paved or main-traveled part of the street, an unobstructed width of the street opposite the standing vehicle shall be left for the free passage of other vehicles and a clear view of the stopped vehicle shall be available from a distance of two hundred feet in each direction upon such street.

2. The section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a street in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

(o) Special Parking Area Permits.

1. The Pueblo of Pojoaque Tribal Council establishes areas within the Pueblo for which a special parking permit is required in order to park on the street. The Pueblo of Pojoaque tribal administrator shall establish the procedures necessary to obtain the permit. The Pueblo shall erect and maintain appropriate signage denoting special parking permit areas.

2. Special parking area permits are not and shall not be construed as rights in property and are granted as a privilege and not a right.

3. Parking within an area designated as a special parking permit area without the proper permit is prohibited.

(p) Impoundment.

If a person violates any provision of this ordinance with an abandoned or inoperable vehicle, the Tribal Police may impound such vehicle after the vehicle is tagged with a notice to remove and the vehicle has not been removed for 24 hours. The registered owner will be notified by letter the vehicle was impounded and will be issued a citation to appear in court. The owner of the vehicle will be responsible for towing and impoundment fees. If a person violates any provision of this ordinance with an abandoned or inoperable vehicle, and the vehicle is obstructing traffic or posing a traffic hazard, the Tribal Police may impound such vehicle immediately. The registered owner will be notified by letter the vehicle was impounded and will be issued a citation to appear in court. The owner of the vehicle will be responsible for towing and impoundment fees. It is in the sole discretion of the Tribal Police to determine if a vehicle is obstructing traffic or posing a traffic hazard.

(q) Exceptions.

The prohibitions in this ordinance shall not apply to emergency and public service vehicles whose operators are performing services for which they are responsible, nor do these prohibitions apply to vehicles belonging to persons under contract with the Pueblo of Pojoaque or any of its businesses to perform a public service or to construction vehicles that have the appropriate Pueblo access permits that are stopped, standing, or parked in or near a construction area or zone. These exceptions, however, shall apply only when an emergency situation requires that such vehicles park in the prohibited areas.

(r) Fines and Penalties.

1. Original Fines are subject to additional penalties if the fine is not paid or citation is not appealed within fifteen (15) calendar days from date of issue of the citation or date of first notice. Penalties for all parking violations will be assessed as follows:

A. First Penalty: Double of Original Fine Amount if not paid by original due date.

B. Second Penalty: Total Amount of first penalty + 30% if not paid by second due date.

Repealed on October 19, 2017.

Subpart P Removal and Exclusion

P-1 Who May be Removed

Any person, not a Member of the Pueblo of Pojoaque who commits any act, which would be a crime under State or Federal Law, or who violates any provision of this Code may be:

(a) Asked to leave the Pueblo, or

(b) Taken into custody for delivery to State or Federal authorities for prosecution under State or Federal statutes, by a duly authorized police officer of the Pueblo.

P-2 Hearing, Removal and Release

(a) A person, not a Member of the Pueblo of Pojoaque, asked to leave the Pueblo by a police officer may request a hearing before the Tribal Court.

(b) Upon a finding based upon a preponderance of the evidence that the person asked to leave the Pueblo committed a crime under State or Federal Law or violated a provision of this Code, the Tribal Court may:

1. Order the person to leave the Pueblo; or

2. Order the person to comply, under penalty or removal, with the requirements of a Court order.

(c) If the Court finds that the person asked to leave the Pueblo did not commit the acts alleged, it shall so instruct the police officer.

P-3 Delivery to State or Federal Authorities

Any person ordered by the Court to leave the Pueblo may:

(a) Be escorted under custody of a police officer to the exterior boundaries of the Pueblo; or

(b) Be delivered into the custody of the State or Federal authorities for prosecution under State or Federal law.

P-4 Illegal Aliens & Unauthorized Persons

It is the policy of the Tribal Council to exclude illegal aliens from the Pojoaque Pueblo Land Grant. Any such individuals currently residing within the Pueblo will have to leave by May 9, 1982. These individuals will not be allowed on the Pueblo at any time.

(a) Anyone residing in the Pueblo having illegal aliens or unauthorized persons living with them will be subject to immediate Tribal Court action.

(b) It is the responsibility of each Tribal Member to enforce this Tribal Ordinance by bringing these offenders to the Tribal Court.

(c) Failure to obey Council orders will result in Tribal Court action.

P-5 Household Residency Restrictions

Tribal Members will not be allowed to have anyone other than their immediate family living with them.

P-6 RESERVED

P-7 Orders of Exclusion/Removal of Non-Members

(a) Inherent Power to Exclude.

1. The Pueblo of Pojoaque has used its traditional, inherent powers in the past to exclude and/or remove non-members from the exterior boundaries of the Pueblo of Pojoaque. The Tribal Officials and the Pueblo of Pojoaque Tribal Court are authorized to exclude and/or remove non-members from entering the exterior boundaries of the Pueblo of Pojoaque.

2. The inherent power of Indian tribes to exclude and/or remove non-members has been recognized and affirmed by American courts.

3. Exclusion and/or removal means the temporary or permanent expulsion of an individual from within the exterior boundaries of the Pueblo of Pojoaque or any part of the exterior boundaries.

(b) Persons and Grounds for Exclusion or Removal.

1. All persons, except those authorized by federal law to be present within the Pueblo, may be excluded or removed. Any person who owns or works on non-Indian fee land may be excluded from the Pueblo as long as they are not denied access to or use of such property.

2. A person may be subject to expulsion or removal if they pose a threat to the health, safety or welfare of a Tribal Member or if their conduct substantially threatens or has a direct effect on the political integrity, institutional process, economic security of the Pueblo, a member of the Pueblo, a resident, an employee, or a visitor to the Pueblo of Pojoaque.

(c) Procedure and Required Hearings.

1. A Tribal Official may order the immediate removal or expulsion of any person at any time. The Order shall be reviewed by the Pueblo of Pojoaque Tribal Court to ensure due process and to determine the extent and duration of the removal or exclusion.

2. The Pueblo of Pojoaque Tribal Court may, as part of a Court proceeding, on its own motion, or on a petition filed in the Court, consider the removal or expulsion of any person.

3. The Court shall consider the patterns of misconduct, the circumstances of each act, and the significance of each act in issuing an Exclusion and/or Removal Order.

4. The Court shall ensure that due process is afforded all parties subject to an Exclusion and/or Removal Order. The Order shall include the duration and scope of the exclusion and/or removal.

5. Emergency and temporary Orders may be issued by either a Tribal Official or the Court.

6. All decisions by the Pueblo of Pojoaque Tribal Court shall be considered final.

(d) Enforcement. Any person who violates an Order of Exclusion and/or Removal may be subject to the following:

1. The Court may direct a Tribal police officer to remove the violator from the Pueblo at the violator's expense.

2. The Court may direct a Tribal police officer to prevent the violator from reentering the Pueblo.

3. The Court may direct a Tribal police officer to refer the matter to the United States Attorney or to the New Mexico District Attorney for appropriate action.

4. The Court may direct a Tribal police officer to refer the matter to the Pueblo of Pojoaque for appropriate civil or criminal action through the Tribal Law and Order Code.

P-8 Exclusion of Sexual Offenders

(a) A sexual offender shall be considered as any Indian found guilty of a sex offense crime or any Indian who had been found more likely that not to have committed a sex offense against another person, and those findings of guilt or findings of more likely than not have determined by any Tribal, Federal or State Court.

(b) Sexual offenders shall be permanently excluded from entering the exterior boundaries of the Pueblo of Pojoaque.

P-9 Exclusion from Entering Gaming Facilities and Parking Areas

(a) Gaming on the Pueblo of Pojoaque is a privilege, not a right.

(b) Persons and Grounds for Exclusion.

1. Any person whose conduct is undesirable may be excluded from the Pueblo of Pojoaque gaming facilities and parking areas.

2. Undesirable conduct includes, but is not limited to: causing a public disturbance, fighting, stealing, disorderly conduct, panhandling, suspicion of card counting, cheating, fraud, intoxication, theft, harassment, badgering of patrons or employees, illegal manipulation of games, loaning money to staff, threats to staff or patrons, suspicious activity, and any illegal activity.

3. A person may request a voluntary exclusion from the gaming facilities and adjacent parking areas.

4. The executive director of Pojoaque Gaming, Inc. or Buffalo Thunder, Inc. may determine whether any other activity is undesirable.

5. Persons excluded may be escorted from the Pueblo of Pojoaque gaming facilities and parking areas.

6. Persons suspected of illegal activity may be detained for a reasonable period of time while a law enforcement officer is contacted.

(c) Procedure for Exclusion.

1. When the undesirable activity is identified, the executive director of Pojoaque Gaming, Inc. or the executive director of Buffalo Thunder, Inc. or the manager on duty shall be contacted.

2. The executive director of Pojoaque Gaming, Inc. or the executive director of Buffalo Thunder, Inc. or the manager on duty shall be considered the management official who determines whether the activity is undesirable and whether the person should be excluded.

3. If the activity is undesirable and the person should be excluded, their photo shall be taken by either the Security Department or the Surveillance Department.

4. The person shall be served with a copy of a completed Exclusion Form and an Exclusion Fact Sheet.

5. The person shall be escorted from the premises by the Security Department.

(d) Appeal of the Exclusion.

1. Unless appealed, an exclusion is permanent.

2. An exclusion may be appealed, in writing, within ten (10) calendar days after the exclusion is issued.

3. Upon receiving a written appeal, the executive director of the Pueblo of Pojoaque Gaming Commission ("PPGC") shall schedule a hearing before the PPGC.

4. The PPGC executive director shall mail notice of the scheduled hearing to the appellant.

5. The Security Department of Pojoaque Gaming, Inc. or Buffalo Thunder, Inc. shall represent the gaming facility at the hearing.

6. The appellant may be represented by an attorney.

7. Either party may present witnesses and documentary evidence at the hearing.

8. The rules of evidence shall not apply to the hearing.

9. The PPGC shall provide its written decision within fourteen (14) calendar days after the hearing.

10. The written decision shall include the PPGC's decision on whether the exclusion was warranted, the duration of any ongoing exclusion, any conditions of a limited exclusion, or the termination of the exclusion. The written decision shall also include whether a trespassing charge is automatic for any future violations of the exclusion.

(e) Enforcement of the Exclusion.

1. The Surveillance Department of Pojoaque Gaming, Inc. and Buffalo Thunder, Inc. shall keep an up-to-date log on all exclusions. The log shall include a photo of the excluded person.

2. The Surveillance Department shall present a report to the Pueblo of Pojoaque Gaming Commission on an annual basis by July 1. The report shall include: the cumulative number of persons excluded from gaming facilities, the number of voluntary exclusions, and how many persons have been excluded for each calendar year.

3. The Surveillance Department is responsible for immediately notifying the Security Department dispatch office of any excluded person who has been observed on the premises or parking areas. If an excluded person is observed by the Security Department, they shall immediately notify the Surveillance Department.

4. The Security Department may detain or escort from the premises any person who violates an exclusion.

5. The Tribal Police, in conjunction with their commissions from the Santa Fe County Sheriff, may file applicable civil or criminal trespass charges in State and/or Tribal Court or any other applicable civil or criminal charges.

P-10 Apprehension in Reservation Area

Whenever the Governor is informed and believes that a Tribal Member has committed a crime outside the Pueblo of Pojoaque and is present in the Pueblo of Pojoaque, using it as an asylum from prosecution, the Governor may order a police officer of the Pueblo of Pojoaque to apprehend the Tribal Member and deliver him to the authorities seeking his arrest at the boundaries of the Pueblo of Pojoaque, if sought by another Pueblo court or State authority who have entered a reciprocal agreement with the Pojoaque Tribal Council for the return of persons sought by the Tribal Court.

P-11 Hearing and Release

If a person apprehended pursuant to Section P-10 of this Subpart, so demands, he shall be taken by the arresting police officers to the Tribal Court, where a Judge shall hold a hearing. If it appears that there is not probable cause to believe the Tribal Member is guilty of the crime with which he is charged outside the Pueblo of Pojoaque, or if it appears that the Tribal Member probably will not receive a fair trial in the state court, the Judge shall order the Tribal Member released from custody.

Subpart Qa Secured Transaction Code

Qa-1 Part 1 General Provisions

Qa-2 Short Title

This Code may be cited as the Pueblo of Pojoaque Secured Transactions Code.

Qa-3 Sovereign Immunity

The sovereign immunity of neither the Pueblo nor of any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Code, absent a recorded, properly ratified, express waiver of sovereign immunity.

Qa-4 Purpose

This Code must be liberally construed and applied to promote its underlying purposes and policies, which are the promotion of economic development and the continued expansion of commercial practices involving the Pueblo.

Qa-5 No Application To Property Not Alienable

This Code does not apply to any property interest that is subject to federal restrictions regarding sale, transfer, or encumbrance.

Qa-6 Reserved

Qa-7 General Definitions

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for":

(a) means a right to payment of a monetary obligation, whether or not earned by performance:

(i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(ii) for services rendered or to be rendered;

(iii) for a policy of insurance issued or to be issued;

(iv) for a secondary obligation incurred or to be incurred;

(v) for energy provided or to be provided;

(vi) for the use or hire of a vessel under a charter or other contract;

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a tribe, governmental unit of a tribe, a person licensed or authorized by a tribe or governmental unit of a tribe to operate the game, a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state;

(B) includes health-care-insurance receivables; and

(C) does not include:

(i) rights to payment evidenced by chattel paper or an instrument;

(ii) commercial tort claims;

(iii) deposit accounts;

(iv) securities or investment accounts, including assets held in investment accounts;

(v) letter-of-credit rights or letters of credit; or

(vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) Reserved.

(5) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in the section on those terms (§ 9-114).

(6) "Agricultural lien" means an interest in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by law in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(7) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or Minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7A) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(8) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under other applicable law may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(9) "Cash proceeds" means money, checks, deposit accounts, or the like.

(10) "Certificated security" means a security that is represented by a certificate.

(11) "Certificate of title" means a written certificate issued by a governmental unit of a state or tribe or other record maintained by a governmental unit of a state or tribe with respect to which a law provides for the security interest in question to be indicated on the certificate or record as a

condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(12) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means an obligation secured by the goods or owed under a lease of the goods and includes such an obligation with respect to software used in the goods. The term does not include:

(A) charters or contracts involving the use or hire of a vessel; or

(B) records that evidences a right to payment arising out of the use of a credit or charge card, or information contained on or for use with the card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(13) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(14) "Commercial tort claim" means a claim arising in tort with respect to which:

(A)the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(15) Reserved.

(16) "Consignee" means a merchant to which goods are delivered in a consignment.

(17) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making

delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is $3,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(18) “Consignor” means a person that delivers goods to a consignee in a consignment.

(19) “Consumer” means an individual who enters into a transaction primarily for personal, family or household purposes.

(19A) “Consumer goods” means goods that are used or bought for use primarily for personal, family , or household purposes.

(20) “Consumer transaction” means a transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest secures the obligation.

(21) “Continuation statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(22) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this Code as supplemented by any other applicable laws.

(22A) “Control”, with respect to securities, means:

(A) in the case of a certificated security in registered form, means that the certificate is delivered to the secured party and:

(i) indorsed to the secured party or in blank by an effective indorsement; or

(ii) registered in the name of the secured party, upon original issue or registration of transfer

by the issuer; or

(B) in the case of an uncertificated security, means:

(i) the security is registered in the name of the secured party, upon original issue or registration of transfer by the issuer; or

(ii) the issuer has agreed in an authenticated writing among the debtor, the issuer and the secured party, that the issuer will comply with an order originated by the secured party to register the uncertificated security in the name of the secured party without further consent by the debtor.

(22B) "Control," with respect to an investment account, means that:

(A) the secured party has become the holder of the investment account;

(B) the investment intermediary has agreed that it will comply with orders relating to the investment account originated by the secured party without further consent by the holder of the investment account;

(C) another person has control of the investment account on behalf of the secured party or, having previously acquired control of the investment account, acknowledges that it has control on behalf of the secured party; or

(D) a security interest has been granted by the holder of the investment account to the holder's own investment intermediary.

(22C) "Control" of deposit account.

(A) With respect to a deposit account, a secured party has control of a deposit account if:

(i) the secured party is the bank with which the deposit account is maintained;

(ii) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor;

(iii) the secured party becomes the bank's customer with respect to the deposit account;

(iv) the name on the deposit account is the name of the secured party or indicates that the secured party has a security interest in the deposit account; or

(v) another person has control of the deposit account on behalf of the secured party or, having previously acquired control of the deposit account, acknowledges that it has control on

behalf of the secured party.

(B) A secured party that has satisfied subsection (A) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

(C) A secured party has control under subsection (A)(2) even if any duty of the bank to comply with instructions originated by the secured party directing disposition of the funds in the deposit account is subject to any condition or conditions or the timing or occurrence of such condition or conditions (other than further consent by the debtor).

(D) The naming of the deposit account in the name of the secured party or with an indication that the secured party has a security interest in the deposit account under subsection (A)(4) does not impose upon the bank any duty not expressly agreed to by the bank.

(22D) Control of electronic chattel paper.

(A) General rule: control of electronic chattel paper. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(B) Specific facts giving control: safe harbor. A system satisfies subsection (A) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(i) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(ii) the authoritative copy identifies the secured party as the assignee of the record or records;

(iii) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(iv) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(v) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(vi) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(23) “Debtor” means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor on the debt secured; or

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes: or

(C) a consignee.

(23A) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include an investment account or accounts evidenced by an instrument.

(24) “Document” means a record:

(A) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and

(B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.

(24A) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(25) “Equipment” means goods other than inventory, farm products, or consumer goods.

(26) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including wild game or aquatic goods produced in aquacultural operations;

(C)supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(27)“Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game or aquacultural operation.

(27A) “Filing office” means an office designated in § 9-501 as the place to file a financing statement.

(28) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(29) “Fixture filing” means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this Code relating to contents of financing statements. The term includes the filing of a financing statement covering goods of a transmitting

utility which are or are to become fixtures.

(30) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(31) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(32) “Goods” means all things that are movable when a security interest attaches. The term:

(A) includes:

(i) fixtures;

(ii) standing timber that is to be cut and removed under a conveyance or contract for sale;

(iii) the unborn young of animals;

(iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes;

(v) manufactured homes; and

(vi) a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

(I) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(II) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods; and

(B) does not include:

(i) a computer program embedded in goods that consist solely of the medium in which the program is embedded; or

(ii) accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(33) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(34) “Instrument” means a negotiable instrument or any other writing that evidences a right to the

payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:

(A) a security or an investment account;

(B) a letter of credit; or

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(35) “Inventory” means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C)are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a busine

(36) “Investment account” means a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement. (36A) “Investment intermediary” means a securities or commodity intermediary under applicable law.

(37) “Lien creditor” means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(38) “Manufactured home” means a structure meeting the definitional requirements found under 42 U.S.C Section 5402(6), as amended from time to time.

(39) “Manufactured-home transaction” means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(40) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) owes payment or other performance of the obligation;

(B) has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(41) “Organization” means a person other than an individual.

(42) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(43) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(44) “Proceeds” means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C)rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(45) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(45A) “Public-finance transaction” means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years;

and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is, or is a governmental unit of, the Pueblo or a state.

(45B) "Publicly searchable record" means a record that is available to the public for inspection and that:

(A) is filed with or issued by the Pueblo, a state, or the United States to form or organize an organization and any record filed with or issued by the Pueblo, a state, or the United States which amends or restates the initial record; or

(B) consists of legislation enacted by the Pueblo, a state, or the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the Pueblo, a state, or the United States which amends or restates the name of the organization.

(46)"Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(47) "Purchaser" means a person that takes by purchase.

(48) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(49) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(49A) "Registered organization" means an organization formed or organized solely under the law of the Pueblo, a single state, or the United States by the filing of a publicly searchable record with, the issuance of a publicly searchable record by, or the enactment of legislation by the Pueblo, the state, or the United States.

(50) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(51) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or

(F) a person that holds a security interest arising under other applicable law.

(52) "Security" means:

(A) a share or similar equity interest issued by a corporation, business trust, statutory trust, joint stock company, or similar entity, but does not include an interest in a partnership or limited liability company except those satisfying the following requirements of (B) or (C);

(B) a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered; or

(C) an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer which:

(i) is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) is, or is of a type, dealt in or traded on securities exchanges or securities markets.

(53) "Security agreement" means an agreement that creates or provides for a security interest.

(54) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to this Code. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to § 9-109.

(55) “Send”, in connection with a record or notification, means:

(A)to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(56) “Sign” means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(57) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(57A) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, including any political subdivision, or any department, agency, or instrumentality thereof.

(57B) “Supporting obligation” means a guaranty, rights under a letter of credit, or other similar obligation that supports the payment or performance of an obligation.

(58) “Termination statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(59) “Transmitting utility” means a person primarily engaged in the business of

(A)operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(60) “Tribal business day” means a day on which the offices of the government of the Pueblo are open for conduct of their ordinary business.

(61) “Tribe”, except in the phrase, “this tribe,” means a federally recognized tribe as defined in 25 U.S.C. Section 4103(13)(B), as amended from time to time.

(62) “Uncertificated security” means a security that is not represented by a certificate.

(b) **Liberal construction.** The meaning of a term not defined by this Code is to be derived from the context involved, with due consideration for consistency in meaning with uniform principles of commercial and contract law operative in the United States.

Qa-8 Notice- Knowledge

(A) Notice defined. Subject to subsection (f), a person has "notice" of a fact if the person has:

(1) actual knowledge of it;

(2) received a notice or notification of it; or

(3) reason to know that it exists from all the facts and circumstances known to the person at the time in question.

(B) Knowledge defined. "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(C) Discover defined. "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(D) Notifying or giving notice or notification. A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(E) Receipt generally. Subject to subsection (f), a person "receives" a notice or notification when:

(1) it comes to that person's attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(F) Receipt by organization. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Qa-9 Value

Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person gives value for rights if the person acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(b) as security for, or in total or partial satisfaction of, a preexisting claim;

(c) by accepting delivery under a preexisting contract for purchase; or

(d) in return for any consideration sufficient to support a simple contract.

Qa-10 Lease Distinguished from Security Interest

(a) **Basic test.** Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) **Transactions that create security interests.** A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) **Factors that do not create security interests.** A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

Qa-11 General Scope

(a) **General scope of Code.** Except as otherwise provided in § 9-111, this Code applies to the following, if within the jurisdiction of the Pueblo:

(1) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment; and

(5) any other commercial activity, including a sale of goods, lease of goods, other transaction in goods, a negotiable instrument, bank deposit and collection, funds transfer, letter of credit, document of title, and investment security, to the extent the commercial activity is implicated in paragraph (1), (3) or (4).

(b) **Consistency in application.** Subject to § 9-114, the application of this Code to a type of transaction enumerated in subsection (a)(5) is to be derived from the context involved, with due consideration for consistency in application with uniform principles of commercial and contract law operative in the United States.

(c) **Security interest in secured obligation.** The application of this Code to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Code does not apply.

Qa-12 Excluded Transactions

This Code does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by law or principle of law for services or materials, but § 9-318(k) applies with respect to priority of the lien;

(3) a tribal lien;

(4) an assignment of a claim for wages, salary, or other compensation of an employee;

(5) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(6) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(7) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(8) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(9) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-317 apply with respect to proceeds and priorities in proceeds;

(10) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(11) a right of recoupment or set-off, but § 9-403 applies with respect to defenses or claims of an account debtor;

(12) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) a fixture filing; and

(B) security agreements covering personal and real property in § 9-604;

(13) an assignment of a claim arising in tort, other than a commercial tort claim, except as provided with respect to proceeds and priorities in proceeds; or

(14) an assignment of a deposit account in a consumer transaction, except as provided with respect to proceeds and priorities in proceeds.

Qa-13 Administration of Code

The Tribal Secretary is charged with the administration of this Code.

Qa-14 Obligation of Good Faith

Every contract or duty within this Code imposes, with respect to its performance and enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of fair dealing.

Qa-15 Course of Performance, Course of Dealing and Usage of Trade

(A) Course of performance defined. A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(B) Course of dealing defined. A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(C) Usage of trade defined. A "usage of trade" is any practice or method of dealing, including a local custom or tradition of the Pueblo, having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(D) Effect. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(E) Practical construction; hierarchy. Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(F) Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(G) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Qa-16 Purchase- Money Security Interest

(a) **Definitions.** In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral.

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) **Purchase-money security interest in goods.** A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) **Purchase-money security interest in software.** A security interest in software is a purchase- money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase- money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) **Consignor's inventory purchase-money security interest.** The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) **Application of payment in non-consumer transaction.** In a transaction other than a consumer transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) if paragraph (1) does not apply, in accordance with the intention of the obligor manifested at or before the time of payment; or

(3) if paragraphs (1) and (2) do not apply, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) **No loss of purchase-money security interest in non-consumer transaction.** In a transaction other than a consumer transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) **Burden of proof in non-consumer transaction.** In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) **Non-consumer-goods transactions; no inference.** The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

Qa-17 Sufficiency of Description

(a) **Sufficiency of description.** Except as otherwise provided in subsections (c) and (d), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) **Examples of reasonable identification.** Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) a type of collateral defined in this Code; or

(2) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) **Broad, generic descriptions insufficient.** In a security agreement, a description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) **Description by type insufficient.** A description only by type of collateral defined in this Code is an insufficient description of:

(1) a commercial tort claim; or

(2) in a consumer transaction, any collateral.

Qa-18 Parties' Power to Choose Applicable Law

(a) **Choice of law generally.** Except as provided in subsection (b) and unless preempted by federal law, if a transaction bears a reasonable relation to the Pueblo and also to another tribe, state, or country, the parties may agree that the law either of the Pueblo or of the other tribe, state, or country governs the parties' rights and duties. In the absence of an effective agreement, this Code applies to all transactions bearing an appropriate relation to the Pueblo. The fact that the law of another

PART 2- EFFECTIVENESS, ATTACHMENT, AND RIGHTS OF THE PARTIES

Qa-19 General Effectiveness Of Security Agreement § 9-201

(a) General effectiveness. Except as otherwise provided in this Code or other applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Applicable consumer laws and other law. A transaction under this Code is subject to:

(1) any applicable rule of law which establishes a different rule for consumers;

(2) any other applicable tribal, federal or state law or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and

(3) any consumer-protection law or regulation.

(c) Other applicable law controls. If a conflict exists between this Code and a rule of law or regulation described in subsection (b), the rule of law or regulation prevails.

Qa-20 Attachment And Enforceability Of Security Interest; Proceeds; Formal Requisites

(a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (g), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is in the possession of the secured party pursuant to the debtor's security agreement and this Code; or

(C) the collateral is a security, an investment account, electronic chattel paper, or a deposit account and the secured party has control pursuant to the debtor's security agreement.

(c) **Other applicable law.** Subsection (b) is subject to a collecting bank's interest in items under applicable law or agreement, any recognized security interest of a letter-of-credit issuer or nominated person under applicable law or agreement, a security interest arising under recognized sales and leases law, and a security interest in a security or in an investment account arising due to the purchase or delivery of the financial asset.

(d) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by this Code and is also attachment of a security interest in a supporting obligation for the collateral.

(e) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest, mortgage, or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(f) **Certain items credited to investment account.** The attachment of a security interest in an investment account is also attachment of a security interest in any securities, commodity contracts, or cash credited to the investment account.

(g) **Other persons bound.** Law other than this Code determines if and when another person becomes bound by a security agreement entered into by a debtor.

Qa-21 After-Acquired Collateral; Future Advances

(a) After-acquired collateral. Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) After-acquired property clause not effective. A security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) Future advances. A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.

Qa-22 Rights And Duties When Collateral Is In Secured Party's Possession Or Control

(a) **Duty of care when secured party in possession.** A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession.

(b) **Right of repledge.** A secured party having possession or control of securities or control of an investment account may create a security interest in the collateral.

(c) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, subsection (a) does not apply unless the secured party is entitled under an agreement:

(1) to charge back uncollected collateral; or

(2) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

Qa-23 Additional Duties Of Certain Secured Parties

(a) **Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duty of secured party in control of investment account or deposit account.** Within 10 tribal business days after receiving a signed demand by the debtor, a secured party having control of an investment account or a deposit account shall send to the investment intermediary or the bank, as applicable, with which the investment account or the deposit account is maintained a signed statement that releases the investment intermediary or the bank from any further obligation to comply with instructions originated by the secured party.

(c) **Duty of secured party if account debtor has been notified of assignment.** Within 10 tribal business days after receiving a signed demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee § 9-403, a signed record that releases the account debtor from any further obligation to the secured party. However, this subsection does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

(d) **Duty of secured party in control of electronic chattel paper.** Within 10 tribal business days after receiving a signed demand by the debtor, a secured party, other than a buyer, having control of electronic chattel paper shall:

(1) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(3) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

Qa-24 No Interest Retained In Right To Payment That Is Sold; Retained Power Of Seller Of Account Or Chattel Paper

(a) **Seller retains no interest.** A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the property sold.

(b) **Power of debtor with respect to account or chattel paper sold.** A debtor that has sold an account or chattel paper has the power to transfer a security interest in the account or chattel paper:

(1) while the buyer's security interest is unperfected; or

(2) to a person that, before the sale, filed a financing statement identifying the account or chattel paper sold as collateral, while the financing statement remains effective.

Qa-25 Request For Accounting; Request Regarding List Of Collateral Or Statement Of Account

(a) A debtor may sign a record indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(b) A secured party, other than a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor, must comply with such a request within 10 tribal business days after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party must disclose the name and address of any known successor in interest. A successor in interest is not subject to this section until a request is received by the successor.

(c) A debtor is entitled to such statement once every six months without charge. The secured party may require payment of a charge not exceeding $25 for each additional statement furnished.

Qa-26 PART 3- PERFECTION AND PRIORITY

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

Qa-27 Law Governing Perfection And Priority Of Security Interests

Except as otherwise provided in § 9-303, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, the local law of the Pueblo governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(A) if the security interest is created pursuant to this Code;

(B) from the time that the debtor becomes subject to the jurisdiction of the Pueblo under § 9-316(d) and (e); or

(C) from the time that the collateral is transferred to a person that thereby becomes a debtor and is subject to the jurisdiction of the Pueblo.

(2) Except as provided in paragraph (3), while goods are located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on farm products.

(3) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

(4) This section does not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization, and enforcement.

Qa-28 RESERVED

Qa-29 Law Governing Perfection And Priority Of Security Interests In Goods Covered By A Certificate Of Title

(a) **Applicability of section.** This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) **When goods covered by certificate of title.** Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) **Applicable law.** The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

Qa-30 RESERVED

Qa-31 RESERVED

Qa-32 RESERVED

Qa-33 RESERVED

SUBPART 2 PERFECTION

Qa-34 When Security Interest Or Agricultural Lien Is Perfected; Continuity Of Perfection

(a) **Perfection of security interest.** Except as otherwise provided in this section and § 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this Code have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) **Perfection of agricultural lien.** An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection set forth in this Code have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) **Continuous perfection; perfection by different methods.** A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Code and is later perfected by another method under this Code, without an intermediate period when it was unperfected.

(d) **Supporting obligation.** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) **Lien securing right to payment.** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) **Certain items credited to investment account.** Perfection of a security interest in an investment account also perfects a security interest in any securities, commodity contracts, or cash credited to the investment account.

Qa-35 Security Interest Perfected Upon Attachment

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in § 9-311(b) regarding goods subject to certain laws, regulations, or treaties;

(2) a security interest created by an assignment of accounts which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts;

(3) a sale of a payment intangible or a promissory note;

(4) a security interest created by an assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(5) a security interest created by an assignment of a beneficial interest in a decedent's estate; and

(6) a security interest created by an assignment by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

Qa-36 When Filing Required To Perfect Security Interest Or Agricultural Lien; Security Interests And Agricultural Liens To Which Filing Provisions Do Not Apply

(a) **General rule: perfection by filing.** Except as otherwise provided in subsection (b) and Sections 9-312 and 9-313, a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under § 9-308(c), dealing with liens securing rights to payment;

(2) that is perfected when it attaches under § 9-309;

(3) in property subject to a law, regulation, or treaty described in § 9-311(a);

(4) in goods in possession of a bailee which is perfected under § 9-312(d)(1) or (2);

(5) in certificated securities, negotiable documents, goods, or instruments which is perfected without filing or possession under § 9-312(e), (f) or (g);

(6) in collateral in the secured party's possession under § 9-313;

(7) in a security, an investment account, electronic chattel paper, or a deposit account perfected by control under § 9-314;

(8) in proceeds which is perfected under § 9-315; or

(9) that is perfected under § 9-316 relating to continued perfection of security interests perfected under the law of another jurisdiction.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Code is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Qa-37 Perfection Of Security Interests In Property Subject To Certain Laws, Regulations, And Treaties

(a) **Security interest subject to other law.** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) any law of the United States whose requirements for a security interest obtaining priority over the rights of a lien creditor with respect to the property preempt the provisions of this Code requiring that security interests be perfected by filing;

(2) list any law covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on a certificate of title as a condition or result of perfection, and any central filing law other than the one provided by this Code; or

(3) a law of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a law, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Code. Except as otherwise provided in subsection (d) and the provisions of this Code providing for perfection by possession when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, a security interest in property subject to a law, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) and the provisions of this Code providing for continued perfection when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a law, regulation, or treaty described in subsection (a) are governed by the law, regulation, or treaty. In other respects, the security interest is subject to this Code.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to a law specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Qa-38 Perfection Of Security Interests In Chattel Paper, Deposit Accounts, Documents, Goods Covered By Documents, Instruments, And Money; Perfection By Permissive Filing; Temporary Perfection Without Filing Or Transfer Of Possession

(a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, securities, or investment accounts may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in the provisions of this Code dealing with perfection with respect to proceeds:

(1) a security interest in a deposit account may be perfected only by control; and

(2) a security interest in money may be perfected only by the secured party taking possession under the provisions of this Code dealing with perfection by possession.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest in the goods that becomes perfected by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) **Temporary perfection: new value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under a signed security agreement.

(f) **Temporary perfection: goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection: delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for 20 days

without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) **Expiration of temporary perfection.** After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this Code.

Qa-39 When Possession By Secured Party Perfects Security Interest Without Filing

(a) **Perfection by possession.** Except as otherwise provided in subsection (b), a secured party may perfect a security interest in certificated securities, negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by the Pueblo or a state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in § 9-316(c), relating to continued perfection of goods covered by a certificate of title.

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having signed a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(f) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this Code otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

Qa-40 Perfection By Control

A security interest in a security, an investment account, electronic chattel paper, or a deposit account may be perfected by control.

Qa-41 Secured Party's Rights On Disposition Of Collateral And In Proceeds

(a) **Disposition of collateral: continuation of security interest or agricultural lien; proceeds.** Except as otherwise provided in this Code and in any applicable law dealing with entrustment of goods:

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) **When commingled proceeds identifiable.** Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by the provisions of this Code dealing with commingled goods; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Code with respect to commingled property of the type involved.

(c) **Perfection of security interest in proceeds.** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) **Continuation of perfection.** A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) **When perfected security interest in proceeds becomes unperfected.**

If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses or is terminated under the provisions of this Code dealing with lapse or termination; or

(2) the 21st day after the security interest attaches to the proceeds.

Qa-42 Continued Perfection Of Security Interest Following Change In Governing Law

(a) **Definition: "place of business".** In this section, "place of business means a place where a debtor conducts its affairs.

(b) **General rule: effect on perfection of change in governing law.** A security interest to which this Code becomes applicable that is perfected pursuant to the law of another jurisdiction remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after the debtor becomes subject to the jurisdiction of the Pueblo under subsections (e) and (f); or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is subject to the jurisdiction of the Pueblo.

(c) **Security interest perfected or unperfected under law of the Pueblo.** If a security interest described in subsection (b) becomes perfected under the law of the Pueblo before the end of the applicable period described in subsection (b), it remains perfected thereafter until perfection lapses in accordance with this Code. Otherwise, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **Goods covered by certificate of title from the Pueblo.** A security interest to which this Code becomes applicable which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from the Pueblo remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. However, the security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under § 9-311(b) or 9-313 are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the Pueblo; or

(2) the expiration of four months after the goods had become so covered.

(e) **When debtor subject to jurisdiction of the Pueblo.** In this section, a debtor is subject to the jurisdiction of the Pueblo if:

(1) the debtor is an individual whose principal residence is within this jurisdiction or who becomes a member of the Pueblo;

(2) the debtor is an organization, other than a registered organization, and its sole place of business or, if it has more than one place of business, its chief executive office, is within this jurisdiction; or

(3) the debtor becomes:

(A) a registered organization that is organized solely under the law of the Pueblo; or

(B) incorporated under a charter issued to a tribe by the United States Secretary of the Interior pursuant to 25 U.S.C. Section 5124 (formerly Section 477), as amended from time to time.

(f) **Continuation of jurisdiction: cessation of existence, etc.** For purposes of subsection (e),

(1) a person other than a registered organization continues to be subject to the jurisdiction of the Pueblo notwithstanding the fact that it ceases to exist, have a residence, or have a place of business; and

(2) a registered organization continues to be subject to the jurisdiction of the Pueblo notwithstanding:

(A) the suspension, revocation, forfeiture, or lapse of the registered organization's status; or

(B) the dissolution, winding up, or cancellation of the existence of the registered organization.

(g) **Effect of filed financing statement with respect to after-acquired collateral.** If a security interest remains perfected under subsection (b)(2):

(1) a financing statement that perfected the security interest under the law applicable before the debtor becomes subject to the jurisdiction of the Pueblo is effective to perfect a security interest in collateral to which a security interest attaches after the debtor becomes subject to the jurisdiction of the Pueblo until the earlier of the times or events described in subsection (b)(1) and (2); and

(2) subsection (c) applies to after-acquired collateral to the same extent that it applies to collateral to which the security interest attached before the debtor became subject to the jurisdiction of the Pueblo.

SUBPART 3. PRIORITY

Qa-43 Interests That Take Priority Over Security Interest Or Agricultural Lien

(a) **Subordination to certain lien creditors and purchasers.** Subject to subsection (b), security interest or agricultural lien is subordinate to the rights of:

(1) a person that becomes a lien creditor before the security interest is perfected;

(2) a buyer, other than a secured party, of tangible personal property, lessee of goods, licensee of a general intangible, or buyer of accounts or general intangibles or securities which:

(A) gives value;

(B) in the case of a buyer of tangible personal property, lessee of goods, or buyer of certificated securities, acquires possession; and

(C) lacks knowledge of the security interest or agricultural lien before it is perfected; or

(3) a secured party entitled to priority under subsection (c).

(b) **Purchase-money grace period.** A purchase-money secured party that files a financing statement before or within 20 days after the debtor acquires possession of the collateral has priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

(c) **General rule for priority among conflicting secured parties.** Priority among conflicting security interests and agricultural liens in the same collateral is determined as follows:

(1) Conflicting perfected security interests and agricultural liens in the same collateral rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach has priority if conflicting security interests and agricultural liens are unperfected.

(d) **Time of perfection for proceeds.** The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds, except as provided in § 9-318.

(e) **Priority in proceeds.** Except as provided elsewhere in this part, a security interest that has priority under § 9-318(e), (f) or (j) also has priority over a conflicting security interest in proceeds if:

(1) the security interest in proceeds is perfected;

(2) the proceeds are cash proceeds or of the same type as the collateral; and

(3) in the case of proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(f) **First-to-file rule for certain collateral.** The order of filing determines priority in proceeds if:

(1) a security interest in chattel paper, a negotiable document, instrument, security or investment account is perfected by a method other than filing; and

(2) the proceeds are not cash proceeds, chattel paper, negotiable documents, instruments, securities, investment accounts or letter-of-credit rights.

(g) **Deferral to other applicable law.** If applicable law other than this Code gives a security interest or right of set-off to a collecting bank, an issuer or nominated person with respect to a letter of credit, a buyer or seller or lessee of goods, or in personal property that is not subject to this Code, that law governs a conflict with this Code.

Qa-44 Particular Priority Rules

(a) **Relationship to preceding Section.** This section creates exceptions to the priority rules of § 9-317.

(b) **Consignee deemed to have rights of consignor.** For the purpose of this Code, while goods are in the possession of a consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer. If Part 3 of this Code results in the consignor having priority over a creditor of the consignee, law other than this Code determines the rights and title of the consignee with regard to that creditor.

(c) **Ordinary-course buyer, licensee and lessee takes free.** Except as otherwise provided in this subsection, a buyer in ordinary course of business, a person that takes a non-exclusive license of a general intangible in ordinary course of business, or a person that takes a lease of goods in ordinary course of business, takes its interest in the collateral free of a security interest in the collateral created by the seller, licensor, or lessor, even if the security interest is perfected and the buyer, licensee or lessee knows of its existence. Whether a licensee or lessee takes its interest

in ordinary course of business is determined by criteria parallel to those used to determine whether a buyer is a buyer in ordinary course of business under § 9-106(a)(8). This subsection does not apply to:

(1) a buyer of farm products from a person engaged in farming operations, unless the buyer

(A) obtains from the seller a notarized statement setting forth the name and address of any person that has a security interest in the farm products; and

(B) either (i) obtains a consent to the sale free of the security interest from the secured party or (ii) makes payment for the farm products jointly to the seller and the secured party; and

(2) a buyer of goods in the possession of the secured party under § 9-313.

(d) **Buyer of consumer goods takes free of security interest.** Unless goods are in the possession of the secured party under § 9-313, a buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) without knowledge of the security interest;

(2) for value;

(3) primarily for the buyer's personal, family, or household purposes; and

(4) for goods having a value of $5,000 or more, before the filing of a financing statement covering the goods.

(e) **Purchaser of chattel paper or instrument.** The following rules apply to a purchaser of chattel paper or an instrument:

(1) The purchaser of chattel paper or an instrument has priority over a security interest if:

(A) the purchaser, in good faith and in the ordinary course of the purchaser's business, gives new value and takes possession of the collateral;

(B) the collateral does not indicate that it previously has been assigned to an identified person other than the purchaser; and

(C) the purchaser is otherwise without knowledge that the purchase violates the rights of the secured party.

(2) The purchaser with priority in chattel paper under paragraph (1) also has priority in proceeds of the chattel paper to the extent that:

(A) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the security interest in the proceeds is unperfected; or

(B) § 9-317(c), (d) or (e) so provides.

(f) **Holder in due course and others protected.** This Code does not limit the rights of, or impose liability on, a holder in due course of a negotiable instrument, a holder to which a negotiable document has been duly negotiated, or a person protected against the assertion of a claim to securities under other law. Filing under this Code is not notice of a claim or defense to the holder or protected person.

(g) **Priority of future advance.** The following rules govern priority of a security interest to the extent that it secures a future advance:

(1) For a conflicting security interest, the priority of an advance under a security agreement is determined under § 9-317(b), except that perfection dates from the time the advance is made if the security interest securing it is perfected only by attachment under § 9-309 or temporarily by law under § 9-312(e), (f), or (g) and is not made pursuant to a commitment entered into before or while the security interest is perfected by another means.

(2) For a lien creditor, the security interest securing an advance is subordinate if the advance is made more than 45 days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

(3) For a buyer of goods other than a buyer in ordinary course of business under § 9-106(a)(8), and with respect to a lessee of goods that does not take its lease in ordinary course of business under § 9-318(c), the security interest securing an advance is subordinate if the advance is made after the earlier of the time the secured party acquires knowledge of the purchase or 45 days after the purchase, unless the advance is made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45-day period.

(4) Paragraphs (1) and (2) do not apply to a security interest held by a person that is a consignor or a buyer of accounts, chattel paper, payment intangibles or promissory notes.

(h) **Purchase-money security interest priority.** The following rules govern the priority of a purchase-money security interest and a conflicting security interest in collateral and its proceeds:

(1) **Goods other than inventory and livestock.** A perfected purchase-money security interest in goods other than inventory or livestock that are farm products has priority over a conflicting security interest in the same goods and in identifiable proceeds of the goods, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2**) Inventory and livestock.** A perfected purchase-money security interest in inventory or livestock that are farm products has priority over a conflicting security interest if the

purchase-money security interest is perfected when the debtor acquires possession of the goods and the purchase-money secured party sends timely and appropriate notice to the holder of the conflicting security interest, provided that notice is not required unless the holder of the conflicting security interest has filed a financing statement covering the same types of goods:

(A) before the purchase-money security interest is perfected by filing; or

(B) if the purchase-money security interest is temporarily perfected under § 9-312(f), before the beginning of the applicable 20-day period.

(3) If a purchase-money secured party has priority in livestock that are farm products under this paragraph (2), it has priority in their identifiable proceeds and products in their unmanufactured states. If a purchase-money secured party has priority in inventory under paragraph (2), it has priority in chattel paper or an instrument constituting proceeds, in:

(A) proceeds of the chattel paper except as otherwise provided in this section; and

(B) identifiable cash proceeds received on or before delivery of the goods to a buyer.

(4) **Software.** A perfected purchase-money security interest in software has priority over a conflicting security interest, and a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods.

(5) **Priority among purchase-money security interests.** Notwithstanding this subsection, if two or more purchase-money security interests are perfected in the same collateral, the security interest securing an obligation for the price has priority, and otherwise priority is determined under § 9-317(b).

(i) **Transferee of money or funds takes free of security interest.** A transferee of money or of funds from a deposit account takes the money or funds free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(j) **Priority of interest perfected by control; possession of certificated security in registered form.** A security interest in a security, an investment account, or a deposit account perfected by control under § 9-314 has priority over a security interest perfected by a method other than control. Multiple security interests perfected by control rank according to time of acquiring control; however, a security interest held by an investment intermediary in the investment account or held by a bank in the deposit account that it maintains has priority regardless of time of acquiring control. A security interest in a certificated security in registered form that is perfected by possession under Section 3-313 and not by control has priority over a conflicting security interest perfected by a method other than control.

(k) **Possessory lien.** A lien on goods created by law or principle of law which secures payment or performance of an obligation for services or materials furnished with respect to the goods by a person in the ordinary course of the person's business and whose effectiveness depends on the

person's possession of the goods has priority over a security interest or agricultural lien in the goods unless the possessory lien is created by a law that expressly provides otherwise.

Qa-45 Priority Of Security Interests In Fixtures And Crops

(a) **Security interest in fixtures under this Code.** A security interest under this Code may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Code in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This Code does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by an appropriate filing before the goods become fixtures or within 20 days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by an appropriate filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this Code and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Code; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a law described in § 9-311(a)(2).

(f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of paragraph (f)(2) priority.** The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) **Subsection (i) prevails.** Subsection (i) prevails over any inconsistent provisions of other laws of the Pueblo.

Qa-46 Accessions

(a) **Creation of security interest in accession.** A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) **Perfection of security interest.** If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) **Priority of security interest.** Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) **Compliance with certificate-of-title law.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title law under § 9-311(b).

(e) **Removal of accession after default.** After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) **Reimbursement following removal.** A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Qa-47 Commingled Goods

(a) **"Commingled goods."** In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) **No security interest in commingled goods as such.** A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) **Attachment of security interest to product or mass.** If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) **Perfection of security interest.** If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) **Priority of security interest.** Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) **Conflicting security interests in product or mass.** If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Qa-48 Priority Of Security Interests In Goods Covered By Certificate Of Title

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this jurisdiction issues a certificate of title (§ 9-106(a)(11)) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under § 9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Qa-49 Priority Subject To Subordination

This Code does not preclude subordination by agreement by a person entitled to priority.

PART 4- RIGHTS OF THIRD PARTIES

Qa-50 Alienability Of Debtor's Rights

Whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Code; however, an agreement between a debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. This section is subject to § 9-404, which invalidates certain legal and contractual restrictions on transferability that generally would be effective under other law.

Qa-51 Secured Party Not Obligated On Contract Of Debtor Or In Tort

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

Qa-52 Rights Of Assignee

(a) **Waiver-of-defense clauses; limitations thereon.** An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment in good

faith, and for value as defined in the law governing negotiable instruments, except as to claims or defenses that may be asserted against a holder in due course of a negotiable instrument. However, such an agreement is not enforceable if:

(1) the agreement relates to an obligation incurred on account of a sale or lease of goods or services;

(2) the account debtor seeks or acquires the goods or services primarily for personal, family or household use; and

(3) the assignor, in the ordinary course of its business, sells or leases goods or services to consumers.

(b) **Parallel rule for negotiable instruments.** If a negotiable promissory note represents an obligation incurred on account of a sale or lease of goods or service, and the issuer seeks or acquires the goods or services primarily for personal, family or household use, and the payee, in the ordinary course of its business, sells or leases goods or services to consumers, then the issuer may assert any claims and defenses against a person entitled to enforce the note**,** including a holder in due course.

(c) **Assignee's rights subject to terms, claims and defenses.** Except to the extent an agreement to the contrary is enforceable under subsection (a), the rights of an assignee are subject to reduction of the amount owed by reason of all terms of the contract between the account debtor and assignor, any defense or claim in recoupment arising from the transaction that gave rise to the contract, and any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives adequate notification of the assignment signed by the assignor or the assignee. This subsection does not apply to the assignee of a health-care-insurance receivable.

(d) **Discharge of account debtor or party to instrument.** An account debtor or party to a negotiable promissory note may discharge its obligation by paying the assignor or person formerly entitled to enforce the note until, but not after, such account debtor or party receives:

(1) adequate notification that performance is to be rendered to the assignee or transferee, signed

(A) in the case of an account debtor, by the assignor or assignee, and

(B) in the case of a negotiable promissory note, by the transferor or transferee; and

(2) if requested by such account debtor or party, reasonable proof of the assignment or transfer.

In the case of an account debtor, discharge under this subsection is effective notwithstanding an otherwise enforceable agreement not to assert claims or defenses. In the case of a party to a negotiable promissory note, discharge under this subsection is effective against a holder in due course.

(e) **Modifications of contract.** A modification of or substitution for an assigned contract is effective against an assignee to the extent provided by law other than this Code.

Qa-53 Restrictions On Assignment

(a) **Commercially harmful restrictions on alienation invalid.** A commercially harmful restriction on alienation (subsections (b), (c) and (d)) of property is invalid.

(b) **Commercially harmful defined for certain transactions.** In an assignment of accounts other than health-care-insurance receivables, an assignment of chattel paper, an assignment of payment intangibles that is not a sale, or a transfer of promissory notes that is not a sale, the term "commercially harmful restriction on alienation" means a term in an agreement between an account debtor and an assignor, or in a promissory note, to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note, to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the affected property; or

(2) provides that such an assignment, transfer, creation, attachment, perfection, or enforcement may give rise to a default or remedy.

(c)(1) **Commercially harmful defined less broadly for other transactions.** In an assignment of a health-care-insurance receivable, a sale of promissory notes, a sale of payment intangibles, or a security interest in other general intangibles (including a contract, permit, or license, or franchise) that is not a sale, the term "commercially harmful restriction on alienation" has the same meaning as in subsection (b) except that the references to enforcement of a security interest appearing in subsection (b)(1) and (2) are excluded.

(2) **Limitation on effect in such other transactions.** To the extent a commercially harmful restriction on alienation under paragraph (c)(1) would otherwise be effective under law other than this Code, the creation, attachment, or perfection of the security interest:

(A) does not impose a duty or obligation on the account debtor or person obligated on the promissory note;

(B) is not enforceable against the account debtor or person obligated on the promissory note; and

(C) does not entitle the secured party to:

(i) use the debtor's rights in or to the property;

(ii) have access to trade secrets or confidential information of the account debtor or person obligated on the promissory note; or

(iii) enforce the security interest.

(d) **Rule of law as commercially harmful restriction.** In addition to the meanings set forth in subsections (b) and (c), the term "commercially harmful restriction on alienation" includes a rule of law to the extent that it:

(1) requires the consent of a governmental body or official to the assignment or transfer of, or actions described in subsection (b) or (c), as applicable, regarding a security interest in, the property; or

(2) has any of the effects of a commercially harmful restriction on alienation as defined in subsection (b) or (c), as applicable.

(e) **Deferral to consumer law; inapplicability.** This section is subject to any different rule in other law for a consumer. In addition, this section does not apply to an assignment of:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104(a)(1) or (2), as the same may be amended from time to time;

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p(d)(4), as the same may be amended from time to time.

(3) a structured settlement payment right; or

(4) a right to payment of winnings in a lottery or other game of chance regulated by law other than this Code.

PART 5- FILING

Qa-54 Acceptance, Refusal, And Effectiveness Of Financing Statement; Administration

(a) **Place to file.** The place to file a financing statement to perfect a security interest or agricultural lien governed by this Code or another record relating to a security interest is the office(s) as provided in the corresponding provisions of the Uniform Commercial Code as enacted in New Mexico as in effect at the time of the filing. If (1) the collateral is as-extracted collateral or timber to be cut, or (2) the financing statement is filed as a fixture filing, the collateral is goods that are or are to become fixtures, and the debtor is not a transmitting utility, then the place to file the financing statement is the office designated for the filing or recording of a record of a mortgage on the related real property.

(b) **Pre-filing; acceptance and refusal.** A financing statement may be filed before a security agreement is made or a security interest attaches. Receipt by the filing office of a financing statement or other record, in appropriate form by an appropriate method, and tender of the filing fee, constitutes filing, and in those cases the filing office must accept the record. If the filing office refuses the record, it must communicate that fact to the person that presented the record, as well as the reason for refusal and the date and time that the record would have otherwise been filed.

(c) **Effectiveness of financing statement; minor errors.** A record in appropriate form and communicated to a filing office by an appropriate method is effective even if:

(1) it is improperly refused by the filing office, except as against a purchaser of the collateral for value in reasonable reliance on the absence of the record from the files;

(2) it is incorrectly indexed by the filing office; or

(3) it has minor errors or omissions in information required to perfect a security interest, unless the errors or omissions make the record seriously misleading. If a financing statement fails sufficiently to provide the name of the debtor, the name provided does not make the financing statement seriously misleading if a search of the filing office's records under the debtor's correct name using the filing office's standard search logic, if any, would disclose the financing statement.

(d) **Subordination in certain cases of reliance.** If information that the filing office's regulations require to be included in a record, but that § 9-502(a) does not require for perfection of a security interest, is incorrect at the time the record is filed, the security interest is subordinate to a conflicting perfected security interest or the interest of a purchaser other than a secured party, to the extent that:

(1) the holder of the conflicting security interest gives value in reasonable reliance on the incorrect information; or

(2) the purchaser gives value and, in the case of a buyer or lessee of property capable of being possessed, takes possession, all in reasonable reliance on the incorrect information.

(e) **Fees.** The fee for filing and indexing a record under subsection (a) is as provided in the corresponding provisions of the Uniform Commercial Code as enacted in New Mexico as in effect at the time of the filing.

Qa-55 Contents Of Records; Authorization; Lapse; Continuation; Termination

(a) **Information required for perfection; other required contents.** A financing statement is sufficient to perfect a security interest or agricultural lien only if it provides the name of the debtor, the name of the secured party or a representative of the secured party, and indicates the collateral covered by the financing statement with a description, whether or not specific, that reasonably identifies the collateral or states that it covers all assets or all personal property. A financing statement or a record of a mortgage that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, is sufficient only if in addition it includes such further information as required by filing office regulations promulgated by the filing office. A record that constitutes a termination statement, assigns a record, continues a record, or otherwise amends a record must comply with the regulations promulgated by the filing office for such records.

(b) **Other information and filing office regulations.** A record may include information other than that required by subsection (a), such as addresses for the debtor and secured party, the characterization of a party as an individual or an organization, or a trade name for the debtor, and may use terms such as "consignor", "lessor", or "licensor", to the extent permitted by and in compliance with the regulations promulgated by the filing office, and shall include such other information to the extent required by the regulations.

(c) **Duration of effectiveness.** A validly filed financing statement is effective for five years after the date of filing unless sooner terminated, except as follows:

(1) if the financing statement correctly indicates that it is filed in connection with a manufactured-home transaction or a public-finance transaction, it is effective for thirty years after the date of filing unless sooner terminated;

(2) if the debtor is a transmitting utility and the initial financing statement so indicates, the financing statement is effective until terminated; and

(3) a mortgage that is effective as a financing statement is effective until the mortgage is satisfied of record.

(d) **Continuation and lapse.** A financing statement lapses at the end of the period specified in subsection (c) unless a continuation statement is filed within six months before the expiration of the period. A lapsed financing statement ceases to perfect the security interest or agricultural lien unless it is perfected otherwise before lapse, and the security interest or agricultural lien is deemed to never have been perfected against a purchaser of the collateral for value.

(e) **Effect of continuation and other amendment.** On proper continuation under subsection (a), the effectiveness of a filed financing statement continues for a period of five years, commencing on the date on which it otherwise would have become ineffective, and again may lapse unless further continued. An amendment to a financing statement other than a continuation statement does not extend the effectiveness of a financing statement, is effective only from its date of filing, and may be effective as a termination statement as prescribed in the regulations promulgated by the filing office.

(f) **Termination statement.** On the filing of a termination statement, a financing statement to which the termination statement relates ceases to be effective. A secured party shall file, cause to be filed, or send the termination statement in accordance with the regulations promulgated by the filing office.

(g) **Persons entitled to file.** A filed record is effective only to the extent that it was filed by a person authorized to do so in the following circumstances:

(1) Only a person authorized by the debtor in compliance with this paragraph or with regulations promulgated by the filing office, or a person otherwise designated by those regulations, may file an initial financing statement, amendment that adds collateral, or amendment that adds a debtor that is effective. By signing or becoming bound as debtor by a

security agreement, the debtor authorizes the filing of a financing statement and amendments covering:

(A) the collateral described in the security agreement; and

(B) property that becomes collateral under § 9-315(a)(2), relating to identifiable proceeds.

(2) Only a person authorized by a secured party may file a termination statement or an amendment other than an amendment that adds collateral or a debtor.

(h) **Effect of disposition on effectiveness of financing statement.** If a security interest or agricultural lien continues in collateral transferred by the debtor under § 9-315, a filed financing statement with respect to the collateral remains effective, even if the secured party knows of or consents to the transfer.

(i) **Effect of name change of effectiveness of financing statement.** If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor so that the financing statement becomes seriously misleading, the financing statement is not effective to perfect a security interest or agricultural lien in collateral acquired by the debtor more than four months after the change, unless an appropriate filing is made before the expiration of the time.

Qa-56 Claim Concerning Inaccurate Or Wrongfully Filed Record

(a) **Permission to file.** A person may file in the filing office an information statement with respect to a record filed there if the person believes that the record is inaccurate or was wrongfully filed.

(b) **Contents of statement under subsection (a).** An information statement under subsection (a) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) **Record not affected by information statement.** The filing of an information statement does not affect the effectiveness of a filed record.

(d) **No duty to file information statement.** A person that believes that a record filed in the filing office is inaccurate or wrongfully filed does not have a duty to file an information statement relating to the record.

PART 6- DEFAULT

Qa-57 SUBPART 1- DEFAULT AND ENFORCEMENT OF SECURITY INTEREST OR AGRICULTURAL LIEN

Qa-58 Rights After Default; Judicial Enforcement; Consignor Or Buyer Of Accounts, Chattel Paper, Payment Intangibles, Or Promissory Notes

(a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part, the rights and duties related to possession or control of collateral (§ 9-204) under § 9-204 and, except as otherwise provided in § 9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights cumulative; simultaneous exercise.** The rights under subsection (a) are cumulative and may be exercised simultaneously.

(c) **Rights of debtor and obligor.** Except as otherwise provided in subsection (f) and § 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(d) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a law under which the agricultural lien was created.

(e) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Code.

(f) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in § 9-607(b), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Qa-59 Waiver And Variance Of Rights And Duties

Except as otherwise provided in the provisions of this Code dealing with waivers (§ 9-624), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following sections of this Code dealing with:

(1) rights and duties when collateral is in a secured party's possession (§ 9-204);

(2) requests for an accounting or requests regarding a list of collateral or statement of an account (§ 9-207);

(3) commercially reasonable collection and enforcement (§ 9-607(b));

(4) application of proceeds, deficiency and surplus (§ 9-608(a) and 9-615(c)), to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) application of proceeds and the like (Sections 9-608 and 9-615(d)), to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) a secured party's right to take possession after default and limitations thereon (§ 9-609), to the extent that it imposes upon the secured party taking possession of collateral without judicial process the duty to do so without breach of the peace and with consent of the debtor;

(7) commercially reasonable disposition (§ 9-610(b)), notification before disposition of the collateral (§ 9-611), and the contents and form of a notification before disposition of the collateral (§ 9-613);

(8) calculation of a deficiency or surplus when the fairness of the amount of proceeds is placed in issue (§ 9-615(e));

(9) explanation of the calculation of a surplus or deficiency (§ 9-616);

(10) acceptance of collateral in satisfaction of obligation (§ 9-620);

(11) right to redeem collateral (§ 9-623);

(12) waivers (§ 9-624);

(13) the secured party's liability for failure to comply with this Code (Sections 9-625 and 9-626); and

(14) attorney's fees (§ 9-629).

Qa-60 Agreement On Standards Concerning Rights And Duties

The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in the provisions of this Code dealing with waiver or variance of rights and duties (§ 9-603), if the standards are not manifestly unreasonable.

Qa-61 Procedure If Security Agreement Covers Real Property Or Fixtures

(a) **Enforcement: personal and real property.** If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) **Enforcement: fixtures.** Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) under this part; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) **Removal of fixtures.** Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) **Injury caused by removal.** A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Qa-62 Unknown Debtor Or Secondary Obligor

A secured party does not owe a duty based on its status as secured party

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

Qa-63 Time Of Default For Agricultural Lien

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the law under which it was created.

Qa-64 Collection And Enforcement By Secured Party

(a) **Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under § 9-311;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(b) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(c) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(d) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Qa-65 Application Of Proceeds Of Collection Or Enforcement; Liability For Deficiency And Right To Surplus

(a) **Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under § 9-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subparagraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under § 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

Qa-66 Secured Party's Limited Right To Take Possession After Default

(a) **Consent or judicial process.** Unless otherwise agreed, a secured party has at the time of or after default the powers described in subsection (b), but such powers may be exercised only pursuant to judicial process or with the debtor's consent. Such consent is effective only if expressed after default by means of a separate dated and signed personal statement in the debtor's handwriting, describing the powers to be exercised by the secured party and expressly acknowledging and waiving the debtor's right to require that such exercise be pursuant to judicial process.

(b) **Possession, rendering equipment unusable and assembly of collateral.** Under the circumstances of subsection (a) the secured party may:

(1) take possession of the collateral;

(2) without removal, render equipment unusable and dispose of collateral on a debtor's premises under § 9-610; and

(3) require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

(c) **No breach of the peace.** A secured party acting pursuant to the debtor's consent under subsection (a) must proceed without breach of the peace.

Qa-67 Disposition Of Collateral After Default

(a) **Disposition after default.** After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) **Commercially reasonable disposition; tribal business day.** Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms. In order to protect the debtor's right to redeem collateral (§ 9-623), a disposition of collateral shall take place only on a tribal business day.

(c) **Purchase by secured party.** A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) **Warranties on disposition.** A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) **Disclaimer of warranties.** A secured party may disclaim or modify warranties under subsection (d):

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) **Record sufficient to disclaim warranties.** A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

Qa-68 Notification Before Disposition Of Collateral

(a) **"Notification date."** In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor a signed notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) **Notification of disposition required.** Except as otherwise provided in subsection (d), a secured party that disposes of collateral under § 9-610 shall send to the persons specified in subsection (c) a reasonable signed notification of disposition.

(c) **Persons to be notified.** To comply with subsection (b), the secured party shall send a signed notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 14 calendar days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 14 calendar days before the notification date, held a security interest in the collateral perfected by compliance with other applicable law (§ 9-311).

(d) **Subsection (b) inapplicable: perishable collateral; recognized market.** Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) **Compliance with subsection (c)(3)(B).** A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than 20 calendar days or earlier than 30 calendar days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

Qa-69 Timeliness Of Notification Before Disposition Of Collateral

(a) **Reasonable time is question of fact.** Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) **Safe harbors for sufficiency of time.** Unless a specific time for sending a notification of disposition is established by the court, a notification of disposition is sent within a reasonable time before the disposition when it is sent after default and:

(1) in a consumer transaction, 20 calendar days or more before the earliest time of disposition set forth in the notification; or

(2) in all other transactions, 10 calendar days or more before the earliest time of disposition set forth in the notification.

Qa-70 Contents And Form Of Notification Before Disposition Of Collateral

The following rules apply to notification before disposition of collateral:

(a) The contents of a notification of disposition are sufficient if the notification:

(1) describes the debtor and the secured party;

(2) describes the collateral that is the subject of the intended disposition;

(3) states the method of intended disposition;

(4) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting;

(5) states the time and place of a public disposition or the time after which any other disposition is to be made;

(6) describes any liability for a deficiency by the person receiving the notice; and

(7) states a telephone number or mailing address from which additional information concerning redemption, disposition and the obligation secured is available.

(b) Whether the contents of a notification that lacks any of the information specified in subsection (a) are nevertheless sufficient is a question of fact.

(c) The contents of a notification providing substantially the information specified in subsection (A) are sufficient, even if the notification includes:

(1) information not specified by that subsection; or

(1) minor errors that are not seriously misleading.

(D) A particular phrasing of the notification is not required.

Qa-71 RESERVED

Qa-72 Application Of Proceeds Of Disposition; Liability For Deficiency And Right To Surplus

(a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under § 9-610 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien a signed demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.

(b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) **Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under § 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):
(1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
(2) the obligor is liable for any deficiency.

(e) **Calculation of surplus or deficiency in disposition to secured party or related person.** Following a disposition to the secured party or a person related to the secured party, the surplus or deficiency is calculated based on the amount of proceeds that would have been realized in a hypothetical disposition complying with this part to a person other than the secured party or a person related to the secured party, if the debtor establishes that the amount of proceeds of the actual disposition is significantly below the range of proceeds that would have been brought by the hypothetical disposition. In this section, a secondary obligor is a person related to the secured party.

(f) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Qa-73 Explanation Of Calculation Of Surplus Or Deficiency

(a) **Explanation of calculation.** In a consumer transaction, a secured party must provide the debtor or consumer obligor a reasonably detailed explanation in a record of the manner in which any surplus or deficiency was calculated if the debtor or consumer obligor demands such an explanation or, in any event, 10 tribal business days before commencing an action for a deficiency.

(b) **Charges for responses.** Each debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding $25 for each additional response.

Qa-74 Rights Of Transferee Of Collateral

(a) **Effects of disposition.** A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien other than liens created under laws providing for liens, if any, that are not to be discharged.

(b) **Rights of good-faith transferee.** A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this Code or the requirements of any judicial proceeding.

(c) **Rights of other transferee.** If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest or agricultural lien under which the disposition is made; and

(3) any other security interest or other lien.

Qa-75 Rights And Duties Of Certain Secondary Obligors

(a) **Rights and duties of secondary obligor.** A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) receives an assignment of a secured obligation from the secured party;

(2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) is subrogated to the rights of a secured party with respect to collateral.

(b) **Effect of assignment, transfer, or subrogation.** An assignment, transfer, or subrogation described in subsection (a):

(1) is not a disposition of collateral under § 9-610; and

(2) relieves the secured party of further duties under this Code.

Qa-76 TRANSFER OF RECORD OR LEGAL TITLE

(a) **"Transfer statement."** In this section, "transfer statement" means a record signed by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its post-default remedies with respect to the collateral;

(3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) **Effect of transfer statement.** A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) **Transfer not a disposition; no relief of secured party's duties.** A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this Code and does not of itself relieve the secured party of its duties under this Code.

Qa-77 Acceptance Of Collateral In Full Or Partial Satisfaction Of Obligation; Notification Of Proposal; Effect Of Acceptance; Compulsory Disposition Of Collateral

(a) **Proposal to accept collateral in full or partial satisfaction of obligation.** Except as provided in subsection (e), a secured party may, after default, propose to retain the collateral in full satisfaction of the obligation it secures or, in a transaction other than a consumer transaction, in partial satisfaction of such obligation.

(b) **Notification of proposal to accept collateral.** A secured party shall send notice of a proposal under subsection (a) to:

(1) the debtor;

(2) any person from whom the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;

(3) any person that, 14 calendar days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by means of a financing statement or compliance with other law that makes the interest reasonably discoverable; and

(4) if the proposal is for partial satisfaction of the obligation, any secondary obligor.

(c) **Conditions to acceptance.** A proposal under this section is not effective unless it is covered by subsection (a) and:

(1) the debtor consents to the acceptance in a record signed after default and if the record consists of a form supplied by the secured party, the term expressing consent is separately signed by the debtor;

(2) no other person specified in subsection (b), and no other person holding an interest in the collateral subject to the secured party's interest, objects to the acceptance within 14 tribal business days after notification was sent; and

(3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.

(d) **Effect of acceptance.** A secured party's acceptance of collateral pursuant to this section:

(1) discharges the obligation to the extent consented to by the debtor;

(2) transfers to the secured party all of the debtor's rights in the collateral;

(3) discharges the security interest or agricultural lien that is the subject of the debtor's consent, and any security interest or other lien or interest that is subordinate thereto, even if the secured party accepting the collateral fails to comply with this article.

(e) **Mandatory disposition of consumer goods.** A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Sections 9-610 through 9-616 if:

(1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) A disposition under subsection (e) must be made no later than 90 calendar days after taking possession, or within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

Qa-78 RESERVED

Qa-79 RESERVED

Qa-80 Right To Redeem Collateral

(a) **Persons that may redeem.** A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) **Requirements for redemption.** To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney's fees described in § 9-615(a)(1), dealing with application of proceeds of disposition.

(c) **When redemption may occur.** A redemption may occur at any time before a secured party:

(1) has collected collateral under § 9-607;

(2) has disposed of collateral or entered into a contract for its disposition under § 9-610; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under § 9-620.

Qa-81 Waiver

(a) **Waiver of disposition notification.** A debtor or secondary obligor may waive the right to notification of disposition of collateral under § 9-611 only by an agreement to that effect entered into and signed after default.

(b) **Waiver of mandatory disposition.** A debtor may waive the right to require disposition of collateral under § 9-620(e), which deals with mandatory disposition of consumer goods, only by an agreement to that effect entered into and signed after default.

(c) **Waiver of redemption right.** In a transaction other than a consumer transaction, a debtor or secondary obligor may waive the right to redeem collateral under § 9-623 only by an agreement to that effect entered into and signed after default. In a consumer transaction, a debtor or secondary obligor may not waive such right.

SUBPART 2 NONCOMPLIANCE WITH CODE

Qa-82 Remedies For Secured Party's Failure To Comply With Code

(a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this Code, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this Code. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages where collateral is consumer goods.** Except as otherwise provided in § 9-628, which deals with the nonliability and limitations on liability of a secured party and the liability of a secondary obligor:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under § 9-626, which deals with actions in which a deficiency or surplus is in issue, may recover damages for the loss of any surplus.

(e) **Statutory damages: noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:

(1) fails to comply with the provisions of this Code dealing with additional duties of a secured party having control of an investment account (§ 9-205(b));

(2) fails to comply with the provisions of this Code dealing with duties of a secured party if an account debtor has been notified of assignment (§ 9-205(c);

(3) files a record that the person is not entitled to file under § 9-502(g);

(4) fails to file, cause to be filed or send a termination statement as required by § 9-502(f);

(5) fails to comply with the provisions of this Code dealing with explanations of calculations of surplus or deficiency (§ 9-616(a)), and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(f) **Statutory damages: noncompliance with the provisions of this Code dealing with a request for an accounting.** A debtor or consumer obligor may recover damages under subsection (b) and, in addition, $500 in each case from a person that, without reasonable cause,

fails to comply with a request for an accounting (§ 9-207). A recipient of a request under § 9-207 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: noncompliance with Code.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under § 9-207, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Qa-83 Action In Which Deficiency Or Surplus Is In Issue

In an action in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(c) If, with respect to a consumer transaction, a secured party fails to prove that a collection was conducted in accord with § 9-607(b) or that a disposition was conducted in accordance with § 9-610(b), or fails to comply with § 9-609(c) or 9-623, the proceeds of the collection or disposition fully satisfy the sum of the secured obligation, expenses, and allowable attorney's fees.

(d) Except as provided in subsection (c) or in § 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is subject to setoff for an amount as stated in § 9-625(b), which may be measured by the amount recovered for conversion of collateral.

(e) For purposes of subsection (d), the liability of the debtor or a secondary obligor is calculated on the presumption that the proceeds of disposition equal the sum of the secured obligation, expenses, and allowable attorney's fees, but the secured party may rebut the presumption.

Qa-84 Determination Of Whether Conduct Was Commercially Reasonable

(a) **Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.** The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) **Dispositions that are commercially reasonable.** A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized market;

(2) at the price current in any recognized market at the time of the disposition; or

(3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) **Approval by court or on behalf of creditors.** A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) in a judicial proceeding;

(2) by a bona fide creditors' committee;

(3) by a representative of creditors; or

(4) by an assignee for the benefit of creditors.

Such approval need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Qa-85 Nonliability And Limitation On Liability Of Secured Party; Liability Of Secondary Obligor

(a) **Limitation of liability of secured party for noncompliance with Code.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Code; and

(2) the secured party's failure to comply with this Code does not affect the liability of the person for a deficiency.

(b) **Limitation of liability based on status as secured party.** A secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) **Limitation of liability if reasonable belief that transaction not a consumer transaction or collateral is not consumer goods.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under § 9-625(c)(2), which deals with statutory damages where the collateral is consumer goods, for its failure to comply with § 9-616, which deals with explanations of calculations of surplus or deficiency.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under § 9-623(c)(2), which deals with statutory damages where the collateral is consumer goods, more than once with respect to any one secured obligation.

Qa-86 Attorney's Fees In Certain Transactions

If the secured party's compliance with this Code is placed in issue in an action, the following rules apply:

(1) If the secured party would have been entitled by agreement to attorney's fees as the prevailing party, and the original principal amount of the indebtedness secured does not exceed $25,000, a debtor or obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.

(2) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

(3) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing debtor or obligor is not a controlling factor.

PART 7- MISCELLANEOUS PROVISIONS

Qa-87 Severability

If any provision of this Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

Qa-88 Effective Date

This Code takes effect upon enactment by the Pueblo of Pojoaque Tribal Council.

Subpart Qb Elections and Conduct

Qb-1 Elections

RESERVED

Qb-2 Code of Conduct

(a) Title and Purpose. This Subpart shall be known as the "Pueblo of Pojoaque Code of Conduct". This Code of Conduct establishes standards by which Pueblo Officials and Pueblo Managers shall conduct themselves while serving the Pueblo to protect and promote the Pueblo's integrity and to enhance the ability of the Pueblo to achieve its objectives in a manner consistent with applicable laws and regulations.

(b) Definitions.

1. "Administrative Remedies" means internal, program management controls.

2. This "Code" means this Pueblo of Pojoaque Code of Conduct.

3. "Dual Capacity" means that a Pueblo Official or Pueblo Manager is attending a meeting by one Pueblo Body of the Pueblo regarding the separate Pueblo Body led or supervised by the Pueblo Official or Pueblo Manager.

4. "Employment" means professional, manual, or other services rendered as an employee, consultant, or other contractor.

5. "Good faith" means that there is an objective basis for the relevant action or assertion and does not require definitive proof.

6. “Honoraria” means free, gratuitous, or honorary gifts, payments, or items of value, as distinguished from income.

7. “Income” means all legally required payments for employment or services from whatever source derived, including without limitation fees, commissions, compensation, or salary.

8. “Pueblo” means the Pueblo of Pojoaque.

9. “Pueblo Body” means any agency, authority, body, board, bureau, commission, committee, council, division, department, entity, enterprise, establishment, or office of the executive, administrative, or legislative components of government or corporate enterprises or subsidiaries of the Pueblo.

10. “Pueblo Manager” means a person leading or supervising personnel at a Pueblo Body, including all tribal departments and all corporate entities, and including the Chief Judge and Chief General Counsel.

11. “Pueblo Official” means the Governor, Lieutenant Governor, Secretary, or Treasurer of the Pueblo.

12. “Tribal Council” means the Pueblo of Pojoaque Tribal Council.

13. “Tribal Court” means the Pueblo of Pojoaque Tribal Court.

(c) Conduct Generally.

1. The actions of Pueblo Officials and Pueblo Managers reflect their commitment to conduct all of the Pueblo’s activities in an honest, ethical, and professional manner in compliance with all applicable laws and regulations and with policies of the Pueblo.

2. Pueblo Officials and Pueblo Managers shall at all times conduct themselves so as to reflect credit on the Pueblo citizens and government, and comply with all applicable laws of the Pueblo with respect to their conduct in the performance of the duties of their respective office or employment.

(d) Equal Representation.

1. Pueblo Officials shall represent the interests of all citizens of the Pueblo and not serve special interests inside or outside of the Pueblo. Pueblo Managers shall serve the interests of the Pueblo pursuant to the specific roles and responsibilities of their positions.

2. To fully represent the interests of the Pueblo, Pueblo Officials and Pueblo Managers shall:

A. not engage in any unethical or illegal business activity;

B. refuse any illegal offers, solicitations, payments, or other remuneration to induce business or governmental opportunities; and

C. refuse any offer that has the appearance of being an illegal or inappropriate offer, solicitation, payment, or remuneration.

(e) Integrity and Confidentiality.

1. Pueblo Officials and Pueblo Managers shall not use their position or Pueblo resources to serve their own personal, financial, or business interests.

2. To respect the privacy of Pueblo employees, clients, and citizens, Pueblo Officials and Pueblo Managers shall not use or disclose confidential information gained in the course of or by reason of their official position or activities, to further their own economic and personal interest or that of anyone else.

(f) Responsibility.

1. Pueblo Officials and Pueblo Managers shall respect the laws that govern the operation of the Pueblo and the treatment of Pueblo citizens.

2. The actions of Pueblo Officials and Pueblo Managers reflect their commitment to conduct Pueblo activities in an honest, ethical, and professional manner. In carrying out their responsibilities, they shall:

A. adhere to both the letter and the spirit of applicable Pueblo, federal, and state laws and regulations;
B. maintain high standards of business and ethical conduct in accordance with applicable Pueblo, federal, and state laws and regulations, especially those concerning fraud, waste, or abuse;

C. be truthful and straightforward in dealing with others;
D. maintain a workplace free of discrimination, harassment, violence, intimidation, threatening or abusive behavior, and drugs, consistent with applicable laws; and
E. follow Indian preference in employment as allowed by law in accordance with Pueblo policies.

(g) Competence.

1. Pueblo Officials and Pueblo Managers shall perform their duties by making informed decisions in good faith and in a manner believed to be in the best interests of the Pueblo of Pojoaque.
2. To maintain confidence in the Pueblo government, Pueblo Officials and Pueblo Managers shall:
   A. practice good faith in all transactions occurring during the course of business;
   B. deal openly, effectively, and honestly with fellow officers, employees, Pueblo citizens, contractors, government agencies, and others;
   C. conduct business dealings in a manner such that the Pueblo shall be the beneficiary of such dealings; and
   D. make educated decisions based on sufficient inquiry and accurate information.

(h) Accountability.

1. Pueblo Officials and Pueblo Managers are bound by this Code of Conduct and shall address behavior inconsistent with this Code in an effective and efficient manner as set forth in this Code to avoid impairing or compromising the Pueblo's interests or services.
2. To adhere to and ensure accountability under this Code, Pueblo Officials and Pueblo Managers shall:
   A. become familiar with this Code and policies and procedures applicable to them;
   B. provide open communication channels to allow Pueblo citizens and employees to pursue compliance or ethical questions without fear of retaliation;
   C. promptly report any suspected violations of this Code or any applicable law or regulation for investigation either through established administrative channels or investigation under this Code;
   D. not take any disciplinary action or otherwise retaliate in any form against any Pueblo citizen or employee, who, in good faith, reports a concern, issue, problem, or violation of the law, regulations or this Code; and
   E. take alleged violations and suspected violations seriously.

(i) Conflicts of Interest, In General.

1. Pueblo Officials and Pueblo Managers shall respect the separation of powers of the Pueblo's executive, legislative, and judicial branches, and will adhere to the Pueblo of Pojoaque Law & Order Code.
2. No Pueblo Officials or Pueblo Managers shall use, or attempt to use, any official or apparent authority of their office or duties which places, or could reasonably be perceived as placing their private economic gain or that of any special business interests with which they are associated, before those of the Pueblo citizenship, whose paramount interests

their office or employment is intended to serve.

3. Pueblo Officials and Pueblo Managers shall avoid any action, whether or not specifically prohibited by this Code, which could result in, or create the appearance of:

A. using public office for private gain;

B. giving preferential treatment to any special interest organization or person;

C. impeding the efficiency or economy of any Pueblo Body;

D. losing or compromising complete independence or impartiality of actions;

E. making a Pueblo Body decision outside official channels; or

F. adversely affecting the confidence of the Pueblo citizens in the integrity of the Pueblo.

4. No Pueblo Official, Pueblo Manager, Pueblo employee, or agent shall participate in the selection, or in the award or administration of a contract supported by Federal or Pueblo funds, if a conflict of interest, real or apparent, would be involved.

5. A conflict of interest shall be deemed to arise for purposes of this section when the relevant Pueblo Official, Pueblo Manager, employee, or agent or any member of their immediate family, or an organization or firm which employs any such person has a financial or other interest in the firm or person selected for the contract or grant award.

(j) Conflict of Interest, Statements and Official Action.

1. All Pueblo Officials, Pueblo Managers, and Pueblo employees who have interests which might conflict with their duties, should disclose those interests. Disclosure shall also extend to those interests held by immediate family members.

2. When Pueblo Official or Pueblo Manager is required to take official action on a matter in which such person or their immediate family member has a personal economic interest, they should first consider eliminating that interest. If that is not feasible or required under this Code, such person shall:

A. prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such person is aware of the responsible party for inclusion in the official record of any vote or other decision or determination;

B. abstain from voting, sponsoring, influencing, making, undertaking, or in any manner attempting to influence, any vote, official decision, or determination which would favor or advance such personal economic interest in such matter; and

C. abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise legally required by law, or unless such person's vote, position, recommendation, or participation is contrary to their personal economic interest.

3. Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for the relevant Pueblo Body.

(k) Economic Interests. To avoid using Pueblo positions to serve their own personal, financial, or business interests, Pueblo Officials and Pueblo Managers shall:

1. not participate in Pueblo decisions in which they have a business, financial, or professional interest within or outside of the Pueblo unless they report those interests as provided in this Code;

2. not accept or receive any benefit, income, favor, or other form of compensation for performing the official duties of their office or employment, beyond the amount or value which

is authorized and received in their official capacity for performing such duties;

3. not solicit or offer anything of value in the course of business dealings for their personal benefit;

4. use authorized employees and staff only for the official purposes for which they are employed or otherwise retained and avoid using the Pueblo's resources to their own personal, financial, or business interests;

5. accept any benefit, income, favor, or other form of compensation for the performance of the duties of any other office or employment not actually performed or for which such official or employee is not otherwise properly authorized or entitled to receive;

6. not participate in or receive kickbacks, bribes, rebates, or any kind of benefits intended to induce favorable decisions or business benefits;

7. report reimbursable expenses accurately and to only one source and avoid receiving any financial gain as a result of business travel or entertainment;

8. be responsible and accountable for the proper use of all Pueblo property and equipment entrusted in their care and not use Pueblo supplies and services in a manner that creates waste or abuse.

9. properly protect and conserve all property, equipment, and supplies which are so assigned, entrusted, or issued to them by virtue of their position with the Pueblo, and not use any property of the Pueblo or any other public property of any kind for other than as authorized and approved for official purposes and activities; and

10. not engage directly or indirectly in financial or other economic transactions as a result of, or primarily depending on, information obtained through their Pueblo office or employment; nor acquire any economic or other financial property or contractual or other economic interest at a time when they believe or have reason to believe, that it will directly and substantially affect or be so affected by their official actions or duties.

(l) Pueblo Contracts: Restrictions and Bid Requirements.

1. No Pueblo Official or Pueblo Manager shall participate in the selection or in the award or administration of a contract or grant award of funds from any government agency, if a conflict of interest, real or apparent, shall be involved, unless so required by governing requirements.

2. No Pueblo Official or Pueblo Manager or any member of such person's immediate family shall be a party to, or have an interest in the profits or benefits of, any contract of the Pueblo or any investment of funds of the Pueblo, unless the contract or the investment meets the following requirements:

A. the contract is let by notice and competitive bid or procurement procedures as required under the applicable laws, rules, regulations, and policies of the Pueblo, for necessary materials or services for the governmental agency or entity involved;

B. in the continuous course of business, the bid was commenced before the person assumed their current term of office or employment;

C. the entire transaction is conducted at arm's length, with the relevant Pueblo Body's full knowledge of the interest of the person; or

D. the relevant Pueblo Official or Pueblo Manager has taken no part in the determination of the specifications, deliberations, or decisions of the Pueblo Body with respect to the contract.

3. This provision shall not apply to such persons qualifying for housing benefits from the Pueblo or for medical benefits from the Indian Health Service or other programs available to

all Pueblo citizens.

(m) Gifts, Awards, Loans, Reimbursements, and Campaign Contributions.

1. Except as otherwise provided herein or by applicable rule or regulation adopted hereunder by the Pueblo or by other applicable law, no Pueblo Official or Pueblo Manager shall solicit or accept for themselves or another, any gift, including economic opportunity, favor, service,

or loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of one hundred fifty dollars ($150.00) or more in any calendar year, from any person, organization or group which:

A. has, or is seeking to obtain, contractual or other business or financial relationships or approval from the Pueblo Body with which the Pueblo Official or Pueblo Manager is associated or employed; or

B. conducts operations or activities which are regulated or in any manner supervised by the Pueblo Body with which the Pueblo Official or Pueblo Manager is associated or employed; or

C. has any interest which, within two years, has been directly involved with, or affected by, the performance or nonperformance of any official act or duty of the Pueblo Official or Pueblo Manager or the Pueblo Body with which the Pueblo Official or Pueblo Manager is associated or employed or which the Pueblo Official or Pueblo Manager knows or has reason to believe is likely to be so involved or affected.

2. The preceding restrictions shall not be prohibit:

A. an occasional non-pecuniary gift, insignificant in value;

B. gifts from and obviously motivated by family or social relationships, as among immediate family citizens or family inheritances;

C. food and refreshments customarily made available in the ordinary course of meetings where a Pueblo Official or Pueblo Manager may properly be in attendance;

D. an award or honoraria customarily or publicly presented in recognition of public service; or

E. remuneration the Pueblo Official or Pueblo Manager, or their delegate, receives representing the Pueblo as part of their official duties on behalf of the Pueblo.

(n) Employment and Abstention.

1. Subject to the restrictions and conditions set forth in this Code, Pueblo Officials and Pueblo Manager may engage in employment and interact with the Pueblo to the same extent as the general public. The Pueblo may, however, adopt further approved restrictions on such transactions or employment as authorized herein and by other applicable laws of the Pueblo, in light of special circumstances or the particular duties of Pueblo Officials or Pueblo Managers.

2. A Tribal Council member or Pueblo Official serving in a dual capacity at any meeting shall abstain from voting or otherwise participating in the official decision or determination of such matter.

3. Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a governmental body to take such action or vote upon such matter.

(o) Compensation.

1. A Tribal Council member may receive income, honoraria, or reimbursement of expenses attributable to performance of duties during a duly called Tribal Council meeting or government function.

2. Pueblo Officials and Pueblo Managers cannot receive double compensation as an officer or employee and council member. No honorarium or stipend shall be paid to any Tribal Council

member who is paid a salary directly by any Pueblo Body for attending a meeting in which they are not entitled to vote or participate. Therefore, income shall not be paid to a Tribal Council member who holds such dual capacity at any meeting. However, if a Tribal Council member attends a meeting that does not address their Pueblo employment agency, that person may receive all applicable stipends for such meeting.

3. In lieu of receiving an otherwise applicable Pueblo honorarium or stipend, Pueblo Officials or Pueblo Managers may decline their employment income for the time they attend a meeting.
4. This section shall not prohibit receipt of authorized compensation for performance of other distinct and lawful duties by a Pueblo Official or Pueblo Manager. In those instances, such Pueblo Official or Pueblo Manager may receive a salary and honoraria or stipend. For example, a Tribal Council member, who is also a casino employee, may represent the Pueblo by speaking at a public event outside of the Pueblo regarding Indian gaming.
5. In all other situations, Pueblo Officials may receive a second honorarium or stipend if it is received from a non-Pueblo organization or agency. If such second honorarium or stipend is received, the honorarium or stipend from the Pueblo shall be returned to the Pueblo.

(p) Debts Owed to the Pueblo.

1. No Pueblo Official or Pueblo Manager shall be delinquent in debt(s) of six months or more to the Pueblo, without reasonable arrangements for payment of such debt(s).
2. Any Pueblo member, singularly or a party to, who is delinquent in debt(s) of six months or more to the Pueblo, who has not made reasonable arrangements for payment of said debt(s), shall not be awarded new contracts, subcontracts, or any moneymaking ventures of the Pueblo until:
   A. the delinquent debt(s) is satisfied in full, or
   B. if the Pueblo Treasurer notifies the awarding Pueblo Body that a debtor applying for a contract, subcontract, or any moneymaking ventures, has paid 50% of their delinquent debt(s) to the Pueblo, that debtor is eligible to compete for contracts, subcontracts, or any moneymaking ventures of the Pueblo, and if awarded a contract, subcontract, or moneymaking venture, they shall sign a statement authorizing the deduction of a minimum of 15% off the top of payment under the contract to be paid toward the delinquent debt(s).

(q) Code Supplements.

1. The Pueblo Governor, Pueblo administrator, or department director of each Pueblo Body which is subject to this Code may submit for approval and adoption by the Tribal Council such supplemental rules, regulations, or standards of conduct for officials, managers, or employees of such Pueblo Body, as necessary and appropriate to the special conditions relating to their particular functions, purposes, and duties and not in conflict with the purposes and other provisions of this Code.
2. Upon enactment by the Tribal Council, such supplemental rules, regulations, or standards shall be implemented in the same manner and to the extent applicable, as are all other laws enacted by the Tribal Council.

(r) Applicable Ethics Officers and Proceedings.

1. Applicable Ethics Officer(s) ("AEO(s)"). Initiation, receipt, review, and investigation of complaints about violations of this Code shall be conducted by the following Pueblo Officials or Pueblo Managers for the following categories of people:

A. the Chief Executive Officer ("CEO") of a Pueblo corporation shall be the AEO for subordinates of that CEO;

B. the Governor shall be the AEO for either the CEO of a Pueblo corporation or non-corporate Pueblo Manager who is not a Pueblo Official; and

C. all non-recused Pueblo Officials shall collectively be the AEOs for any Pueblo Official(s).

2. Complaints. Any complaint regarding compliance with this Code shall be filed with the AEO with a copy also filed with the next higher AEO(s), as applicable. Each complaint shall contain a statement of the alleged misconduct, including any section of this Code alleged to have been violated and the alleged facts upon which such charges are based.

3. Notice. The AEO(s) shall issue to the accused official or employee a written notice containing a statement of alleged misconduct, including any section of this Code alleged to have been violated. The notice shall state alleged facts upon which such charges are based.

4. Response. Within one week after receipt of the complaint, the accused official or employee shall file a written response setting forth any admission, denial, affirmative defense, or other matter on which they intend to rely in defense of their actions.

5. Investigation.

A. Within two weeks after receipt of a complaint notice response, the AEO(s) shall investigate the allegations therein. If the AEO(s) find sufficient cause to proceed, the AEO(s) shall conduct a non-adjudicatory administrative hearing to determine violations or noncompliance with this Code.

B. If the investigation establishes minor violations or a situation that only warrants Administrative Remedies, the record of the investigation shall so state.

C. If the investigation identifies serious violations of this Code that are prosecutable in court, the AEO(s) shall refer the matter to the Pueblo Prosecutor for prosecution.

D. Upon recommendation of the AEO(s), concurred in by the next higher AEO(s), as applicable, the Tribal Council, sitting in its capacity, shall consider alleged violations that are more serious than those that only warrant Administrative Remedies but do not warrant criminal judicial prosecution.

E. No action shall be brought under this Code by the AEO(s) before the Tribal Council more than three years after cause of action as accrued.

6. Retaliation Prohibition.

A. Retaliation, including any form of adverse or punitive action, against any party or witness to a complaint shall be prohibited.

B. This protection shall also be afforded to any persons, including but not limited to the AEO(s), offering testimony or evidence or complying with directives authorized under this Code.

C. Any retaliation for actions under this Code shall be subject to civil and criminal prosecution and penalties by the Pueblo, including for obstruction and contempt violations.

(s) Ethics Hearing and Appeal.

1. Hearing.

A. A Tribal Council hearing on alleged violation of this Code shall be conducted at regularly scheduled Tribal Council meeting within two weeks after it has been presented by the AEO(s).

B. The AEO(s) shall represent the Pueblo in the capacity of complainant in administrative enforcement of complaints under this Code to be considered by the Tribal Council.

C. For Tribal Council hearings on complaints under this Code, the accused shall be given sufficient prior notice identifying the accusor(s) and particularly defining the allegations. The burden of proof shall rest with the Pueblo. The accused has the right to be represented, present testimony, and cross-examine witnesses, and the accuser.

D. All Tribal Council hearings under this Code shall follow rules of procedures and evidence established and adopted by the Tribal Council.

2. Decision.

A. Upon completion of the Tribal Council hearing, the Tribal Council shall deliberate in executive session and by resolution render and adopt its findings of facts, conclusions of law, and recommendations for sanction. The Tribal Council shall act on complaints by a majority, quorum vote.

B. The Tribal Council may dismiss any complaint which the Tribal Council determines has insufficient facts to constitute a violation of this Code, or if there is insufficient evidence to support the allegations.

C. The Tribal Council may impose or recommend any sanctions, civil damages, restitution, or other penalties provided in this Code, or refer their findings to other appropriate entities for action.

D. The finding, conclusions, and sanctions, if any, by the Tribal Council shall be final for purposes of judicial review.

(t) General Penalties.

1. A person found in violation of this Code shall be subject to, and personally liable for, the following, without regard to the imposition of any administrative sanction or criminal fine or penalty:

A. Any Pueblo Official or Pueblo Manager who violates any economic disclosure or reporting requirement of this Code shall be liable to the Pueblo for a civil penalty in an amount not to exceed the value of any interest not properly reported.

B. Any Pueblo Official or Pueblo Manager who realizes an economic benefit as a result of violation of any prohibition or restriction in this Code shall be liable to the Pueblo for a civil penalty in the amount not exceeding three times the amount or value of the benefit or benefits so obtained.

C. If two or more persons are responsible for any violation of this Code, each of them shall be liable to the Pueblo for the full amount of any civil penalty or damages prescribed herein, the full amount of which may be imposed on and collected from each of them individually.

2. Any civil penalties imposed under this Code shall be collected in any manner authorized for recovery of debts or obligations owed to the Pueblo and shall be paid into the general fund of the Pueblo.

3. No imposition of civil penalties provided for under this Code shall bar institution of any civil or criminal action, liability, judgment, conviction, or punishment otherwise applicable to the underlying action, nor shall determination of any such penalty be barred thereby.

4. In addition to the other penalties of sanctions imposed pursuant to this Code or otherwise, the following fines also shall be imposed:

A. Loss of per diem/salary for one week if the relevant improper contract value is $100 or less.

B. Loss of per diem/salary for two weeks if the relevant improper contract value exceeds
$100 but is not more than $500.

C. Referral for possible removal if the relevant improper contract value exceeds $500.

(u) Administrative Sanctions.

1. Upon a finding that there has been a violation of this Code, the Tribal Council may impose any or all of the following penalties or sanctions, in accordance with applicable laws, personnel policies, and procedures:

A. issue a private reprimand to such person, with or without suspension of any or all other sanctions provided herein;

B. issue a written public reprimand, which shall be entered into such person's permanent record of employment or office and the permanent record of the Pueblo Body of which such person is a member or employee;

C. discipline of any governmental employee, including suspension without pay or other benefits;

D. suspension from public office or employment and forfeiture of all compensation and benefits accruing there from, for not less than one month nor for more than one year; or

E. removal, discharge, dismissal, or termination from public office or employment.

2. No sanctions or penalties provided herein shall limit any other powers of the Tribal Council or the Tribal Court, nor of any other entity or administrative officials or employees under other applicable law, rules, regulations, or procedures.

3. Temporary Suspension. A person accused of violating this Code may be suspended from their position with or without pay until such time their guilt or innocence has been established. If the allegations are not substantiated, the person should be restored to their full official duties and responsibilities. In cases where allegations have resulted in prosecution and conviction, and after exhaustion of all appeals, the person shall, upon conviction, immediately forfeit their position. Pueblo Officials or Pueblo Managers who have been convicted under the provisions of this Code may be subjected to the provisions of Vacancies, Removal, and Recall as set forth in the Elections Code if they do not voluntarily relinquish their positions.

Subpart R Business and Commercial Activities

R-1 Gaming Ordinance

(a) The Tribal Council has enacted a comprehensive gaming ordinance entitled the Third Amended and Restated Gaming Ordinance of the Pueblo of Pojoaque. All Gaming shall be conducted in accordance with this Ordinance. A copy of the Ordinance shall be kept on file with the Pojoaque Pueblo Gaming Commission.

(b) Civil Remedies. Except as otherwise provided in the Gaming Ordinance, any person authorized to enforce the Ordinance may bring a civil action in the Tribal Court against any person who violates the Ordinance and recover monetary damages, attorney fees, injunctive relief, and/or any other relief that the Tribal Court deems is just and equitable under the circumstances.

(c) Jurisdiction. Except as otherwise provided in the Gaming Ordinance, the Tribal Court shall have exclusive jurisdiction over all matters concerning the administration and enforcement of the Ordinance.

R-2 Consumer Financial Services Regulatory Code

(a) Policy.

1. Policy of Self-Government. The Pueblo is firmly committed to the principle of self-government. Revenues from consumer financial services shall be utilized and expended only for the following purposes:

A. To fund the Pueblo's government operations or programs.

B. To provide for the public health and general welfare of the Pueblo and its members and visitors to the Pueblo's community.

C. To promote the Pueblo's economic development and self-sufficiency.

D. To donate to charitable organizations.

2. Consumer Financial Services Policy. The establishment, promotion and operation of consumer financial services are necessary, provided that such services are regulated and controlled by the Pueblo pursuant to this Code and that the revenues of such services are used exclusively for the benefit of the Pueblo.

3. Responsibility for Regulation. The Pueblo shall have the sole responsibility for the regulation and conduct of consumer financial services authorized by this Code.

4. Consumer Financial Services Authorized. Consumer financial services that are subject to licensing under this Code are authorized and permitted only as described in this Code and any regulations of the Authority adopted under this Code.

(b) Definitions. In this Code, except where otherwise specifically provided or unless the context otherwise requires, the following terms and expressions shall have the following meanings:

1. "Applicant" means any Person who has applied for a License under the provisions of this Code.

2. "Application" means a request for the issuance of a License under the provisions of this Code.

3. "Code" means this Financial Services Regulatory Code.

4. “Consumer” means a natural person who acquires goods, services, or credit primarily for personal, family or household purposes. The term does not include a person who acquires goods, services, or credit primarily for business, commercial, or investment purposes.

5. “Consumer Financial Services” or “Financial Services” means the business of providing goods, services, or credit to consumers in transactions subject to this Code in exchange for interest, fees, rent, or other form of consideration on the Pueblo’s land or within the Pueblo’s jurisdiction. The term includes, without limitation, loans, payday loans, installment loans, credit sales, pawn transactions, sale-leaseback transactions, rent-to-own transactions, guaranties, letters of credit, or other forms of Consumer Financial Services.

6. “Consumer Financial Services Regulatory Authority” or “Authority” means the regulatory authority established and described in Section (d) of this Code.

7. “Employee Licensee” means a person who works on the Pueblo’s jurisdictional land that is licensed by the Authority to be employed by a Licensee.

8. “Financial Services Licensee” means a person that is licensed by the Authority to engage in the business of providing Consumer Financial Services.

9. “License” means the official, legal and revocable Financial Services License issued by the Authority. A License relating to Consumer Financial Services is a revocable privilege subject to revocation in accordance with this Code. A License is a revocable privilege to do business within the jurisdiction of the Pueblo of Pojoaque.

10. “Licensee” means any Financial Services Licensee, Vendor Licensee or Employee Licensee whenever used generally in this Code.

11. “Person” means any natural person, partnership, joint venture, association, trust, firm, estate, club, society, receiver, assignee, trustee in bankruptcy, political entity, company, corporation or other group, however organized, and any owner, director, officer or employee of any such entity or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, the government of the Pueblo, any governmental entity of the Pueblo or any of the above listed forms of business entities that are wholly owned or operated by the Pueblo, or any other entity whatsoever, who engages or seeks to engage in the business of Consumer Financial Services pursuant to this Code; provided, that the term does not include the Federal Government, State Government, or any agency thereof.

12. “Pueblo” means the Pueblo of Pojoaque.

13. “Tribal Council” means the Pueblo of Pojoaque Regular Tribal Council, the primary governing body of the Pueblo as empowered by the Pueblo’s traditional government and pursuant to laws of the Pueblo.

14. “Vendor Licensee” means a Person or entity that is licensed by the Authority to provide services directly to a Financial Services Licensee, including, but not limited to management services, customer service support, marketing services and software services.

(c) General Provisions.

1. Construction. In construing the provisions of this Code, the following shall apply:

A. The provisions of this Code, being necessary for the benefit of the Pueblo and its members, shall be liberally construed to effectuate its purpose and to promote substantial justice.

B. Tribal Council Resolution 2013-100 (November 20, 2013) and the Policy stated in Section (a) constitute the standards to be observed by the Authority in the exercise of its discretionary powers under the Code, in the adoption of implementing regulations, in the issuance of orders and declaratory statements, in the examination and supervision of Licensees, and in all matters of construction and application of the Code required for any determination or action by the Authority.

C. Nothing in this Code shall be deemed or construed to be consent of the Authority to the jurisdiction of the United States or of any state, or of any other tribe with regard to the business or affairs of the Authority.

D. No Person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the Authority shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no Person other than the Person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

E. Words of the masculine gender or neutral include masculine and feminine genders and are neutral.

F. Words in the present tense include the future and past tenses.

G. Words in the singular number include the plural, and words in the plural number include the singular.

H. Any and all decisions and orders of the Authority, the Pueblo of Pojoaque Tribal Court, or the Tribal Council shall be accorded primary deference as to the construction and interpretation of this Code.

2. Severability. If any section of this Code is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

3. Effective Date. This Code shall take effect and be in full force and effect from and after the date of its final passage and approval by the Tribal Council.

(d) Consumer Financial Services Regulatory Authority.

1. Regulatory Agent; Compensation, Duties.

A. Regulatory Agent; Term of Office. The Authority shall initially be governed by a Regulatory Agent(s) appointed by the Tribal Council. The Tribal Council may increase the number of regulatory agents by Resolution as it deems necessary to conduct the governmental operations of the Authority. The Agent shall be appointed for a term of at least one (1) year, or until the Agent is otherwise replaced or removed by the Tribal Council.

B. Compensation. The compensation of the Agent shall be established from time to time by the Tribal Council or as the Tribal Council may delegate to the Authority.

C. Duties. The Agent shall have the following responsibilities:

i. Oversee and have responsibility for the day-to-day operations of the Authority, including supervision of Authority employees;

ii. Serve as the agent for service of process for the Authority; and

iii. Conduct or oversee the conduct of any meetings or hearings held by the Authority in accordance with this Code or further directive of the Tribal Council.

D. Agent Qualifications. Any person appointed as an Agent of the Authority shall meet the following qualifications:

i. The Agent shall have expertise, experience, education or a combination thereof in the following areas: financial services, finance, management, business, governmental regulation, law, and/or Pueblo policy.

ii. The Agent shall be at least twenty-one (21) years of age and show proof of High School Diploma or equivalent.

iii. No person shall serve as Regulatory Agent if:

a. His/her prior activities, criminal record, if any, or reputation, habits or associations:

(1) Pose a threat to the public interest;

(2) Threaten the effective regulation and control of financial services; or

(3) Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of financial services.

b. He/she has been convicted of or entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction in the last ten (10) years from the date of appointment as Regulatory Agent; or

c. He/she, or any member of his or her Immediate Family has an ownership, partnership or other direct monetary or financial interest in the conduct of any Licensee or is in privity with a Financial Services Licensee, or one of its agents, contractors, or sub-contractors; or if he or she has any other personal or legal relationship that places him/her in a conflict of interest with any Licensee. For purposes of this subsection, "Immediate Family" includes spouse or significant other, parents, children, and siblings. Ownership of a Licensee by virtue of membership in the Pueblo is not a per se monetary or financial interest in the conduct of any Licensee.

2. Meetings. The Authority shall hold regular meetings at least quarterly or as otherwise determined by the Authority.

3. Prohibited Acts. The Agent and Authority employees shall not do any of the following with respect to any Licensee under the jurisdiction of the Authority:

A. Be indebted, either directly or indirectly, as borrower, accommodation endorser, surety or guarantor to any Licensee unless such indebtedness was contracted before becoming employed by or appointed to the Authority and is fully disclosed to the Authority. Notwithstanding the foregoing, an employee of the Authority other than a Commissioner may become so indebted; provided that, while the debt is outstanding, the borrower shall not participate in any examination of any Licensee conducted by the Authority and the indebtedness is:

i. Incurred on terms no more favorable than those available to the general public, and

ii. Fully disclosed to and approved by the Chairperson before funding, including the following information:

a. The date of the indebtedness;

b. The amount;

c. The interest rate; and

d. Security.

B. Be an officer, director, or employee of any Licensee.

C. Be interested in, directly or indirectly, or receive from any Licensee or any officer, director, or employee of any Licensee any salary, fee, compensation or other valuable thing by way of gift, donation, credit, or compensation for services or otherwise; except that an Agent or Authority employee is permitted to receive his or her pro-rata share of revenue that has been generated by a Licensee and is distributed among all eligible Pueblo members by virtue of membership in the Pueblo.

4. Removal of Regulatory Agent / Vacancy.

A. Removal. The Agent may be removed by the Tribal Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of financial services or the Authority, is contrary to the best interests of the Pueblo, or violates the letter or intent of this Code. The decision of the Tribal Council concerning removal of a Regulatory Agent shall be final.

B. Vacancy. If the Agent shall die, resign, be removed or for any reason be unable to serve as an Agent, the Tribal Council shall declare the position vacant and shall appoint another qualified individual to fill the position within thirty (30) days of the vacancy. The term of office of the person appointed to replace the Agent shall be for the balance of the unexpired term for the position.

5. Powers of the Authority. The Authority has responsibility for the discharge of all duties imposed by law and this Code on the Authority. In furtherance, but not in limitation of, the Authority's purposes and responsibilities, and subject to any restrictions contained in this Code or other applicable law, the Authority shall have, and is authorized to exercise the following powers and responsibilities in addition to all powers already conferred by this Code:

A. To promulgate, adopt, and enforce regulations and rules furthering the purpose and provisions of this Code; provided that such regulations shall take effect only upon approval of the Tribal Council.

B. To examine or inspect or cause to be examined or inspected each Licensee annually and more frequently if the Authority considers it necessary or advisable.

C. To make or cause to be made reasonable investigations of any Licensee or Person as it deems necessary or advisable to ensure compliance with this Code or any order of the Authority, to determine whether any Licensee or Person has engaged, is engaging

or is about to engage in any act, practice or transaction that constitutes an unsafe or unsound practice or violation of this Code or any order of the Authority; or to aid in adopting rules or regulations pursuant to this Code.

D. To establish procedures designed to permit detection of any irregularities, fraud, or the like.

E. Upon prior explicit resolution and approval of the Tribal Council, to employ such advisors as it may deem necessary. Advisors may include, but are not limited to, lawyers, accountants, law enforcement specialists and financial services professionals.

F. To accept, review, approve or disapprove any Application for a License, including conducting or arranging for background investigations of all Applicants.

G. To examine under oath, either orally or in writing, in hearings or otherwise, any Licensee or Person, or agent, officer or employee of any Financial Services Licensee, or any other witness with respect to any matters related to this Code and to compel by subpoena the attendance of witnesses and the production of any books, records, and papers with respect thereto. Upon refusal to appear or produce, the Authority may apply to a court of competent jurisdiction to compel appearance or production.

H. To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property and the books, records, papers, vouchers, accounts, documents and financial statements of any Licensee or Person engaging or participating in, or suspected to be engaging or participating in, Consumer Financial Services.

I. To discipline any Licensee or Person engaging or participating in Consumer Financial Services in violation of this Code by ordering immediate compliance, issuing fines and sanctions, and suspending or revoking any License pursuant to the hearings and due process required by Section (d)(10) of this Code.

J. To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Authority's authorized activities, subject to any approval of the Tribal Council that may be required by the Tribal Council.

K. To adopt a schedule of fees to be charged for the processing, issuance and renewal of Licenses, including fees or charges associated with conducting background checks; for reasonable examinations of Licensees; and for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records and to impose the forgoing fees as applicable.

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

M. To make such findings as may be necessary or advisable to implement the Authority's duties and powers, with such findings to be given deference as the legally binding findings of a governmental entity.

6. Investigations, Right of Entrance.

A. Investigations. The Authority, upon complaint or upon its own initiative or whenever it may deem it necessary or advisable in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any Licensee or Person engaging or suspected to be engaging in Pueblo business within its jurisdiction.

i. In undertaking such investigations, the Authority may request the assistance of federal or local law enforcement officials, legal counsel and/or other third parties.

ii. In conducting such investigation, the Authority shall make no order or final decisions without affording any affected party notice and a hearing pursuant to Section (d)(10) of this Code.

B. Right of Entrance. The Authority and duly authorized employees or agents of the Authority, during regular business hours, may reasonably enter upon any Pueblo premises of any Licensee, or Person engaging in or suspected to be engaging in Consumer Financial Services for the purpose of making inspections and examining the accounts, books, papers and documents of any such Licensee, or Person.

C. Aid to Entry. The staff of the Licensee, or Person engaging in or suspected to be engaging in Consumer Financial Services shall facilitate such inspection or examinations by giving every reasonable aid to the Authority and to any properly authorized officer or employee.

7. Annual Budget. The Authority shall prepare an annual operating budget for all Authority activities and present it to the Tribal Council no less than thirty (30) days prior to the commencement of each operating year or part thereof.

8. Authority Regulations.

A. Regulations necessary to carry out the implementation and orderly performance of the Authority's duties and powers shall include, but shall not be limited to, the following:

i. The making of findings or other information required by or necessary or advisable to implement this Code;

ii. Interpretation and application of this Code, as may be necessary or advisable to enforce the Authority's duties and exercise its powers;

iii. A regulatory system for overseeing Consumer Financial Services, including accounting, contracting, management and supervision;

iv. The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Authority authorized by this Code; and

v. Specification of the amount and the schedule of applicable Licensing and examination fees that shall be imposed by the Authority.

B. No regulation of the Authority shall be of any force or effect unless it is adopted by the Authority by written resolution and subsequently approved by a resolution of the Regular Tribal Council.

9. Presentations and Reports to the Tribal Council. Annually, the Authority shall present to the Tribal Council, a report summarizing the prior year's activities, any significant problems or accomplishments, reports received from each Licensee, plans for the upcoming year, and such other information as the Authority deems necessary or advisable to keep the Tribal Council fully informed as to the status of the Authority's activities. The Authority shall define by regulation, subject to the approval of the Tribal Council, the schedule for the submission of any other reports or presentations.

10. Notice and Opportunity to Cure; Due Process; Notice; Hearings; Examiner. The Authority shall provide notice and a reasonable opportunity of at least sixty (60) days to cure before it initiates any action to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder absent exigent circumstances or other good cause. If the matter(s) is not satisfactorily cured within that period, the Authority shall provide notice and the opportunity for a hearing comporting with notions of due process if it is to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder.

A. No Hearing, Voluntary Resolution. Whenever it shall appear to the satisfaction of the Authority that all of the interested parties involved in any dispute or concern have agreed concerning the matter at hand, the Authority may dismiss or approve resolution of the issue, as appropriate, without a hearing.

B. Notice of Hearing. The Authority shall, within ten (10) days after being advised of an event giving rise to the advisability of a hearing under this subsection, provide a written notice setting forth, with specificity, the issues to be resolved and the date and time at which a hearing shall be conducted.

C. Hearing. Except as determined by the Authority, the hearing shall be scheduled to take place no less than ten (10) and no more than thirty (30) business days after the notice of hearing is delivered, unless the Authority for good cause shown or upon its own motion determines the hearing should reasonably be postponed and rescheduled.

At the hearing, the affected parties shall be provided the opportunity to present oral or written testimony to all people interested therein as determined by the Authority.

D. Examiner. The Authority's Regulatory Agent shall act as examiner for the purpose of holding any hearing, or the Agent may appoint an examiner qualified in the law or possessing knowledge or expertise in the subject matter of the hearing for the purpose of conducting any hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Authority under this Code with respect to any such hearing.

E. Decision. The Authority shall issue a written decision to all affected parties within thirty (30) days after the hearing.

F. Appeals. Affected parties may appeal an Authority determination by filing a written appeal to the Tribal Court, along with filing fees, in accordance with Subpart G-10 of the Pueblo of Pojoaque Law and Order Code within twenty (20) days of receiving the Authority's final written decision in accordance with (j)(3)(D) of this Code.

(e) Licenses.

1. Applicability. Any Person seeking to engage in Consumer Financial Services subject to this Code, a Vendor Licensee, or, when applicable, any Person employed by a Financial Services Licensee shall apply for and receive all required licenses prior to engaging in Consumer Financial Services, providing services to a Financial Services Licensee, or being employed by a Financial Services Licensee.

A. A person who engages in Consumer Financial Services without charging or collecting interest or other consideration for a transaction or charges or collects nominal or incidental consideration is not required to obtain a Licensee to engage in Consumer Financial Services, but is required to otherwise comply with the provisions of the Code.

2. Application Procedure.

A. Submission to Authority. An Applicant seeking a License shall submit an Application to the Authority on such form as the Authority may require.

B. Application Contents. At a minimum, the Application shall contain the following information:

i. For Applicants that are other than natural persons, each of the Applicant's owners, officers and/or directors; and principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager;

ii. Each of its owners or partners, if an unincorporated business;

iii. Each of its shareholders who own more than ten percent (10%) of the shares of the corporation;

iv. For each person listed in Sections (e)1 above, and for all Applicants that are natural persons, an Application for a Financial Services License, an Application for a Vendor License, or Employee License shall include each person's criminal and civil record, if any, and an explanation of any crimes for which he has been convicted or civil suits in which a judgment has been entered against him or to which he has entered a plea of no contest in any jurisdiction and a complete disclosure of any pending or anticipated civil or criminal action in any jurisdiction against the Applicant. The Applicant shall provide written permission giving the Authority or its designees the right to the Applicant's background, including his criminal record;

v. An Applicant for an Employee License shall provide all necessary information and written permission for the Authority or its designee to obtain the Applicant's credit history and/or credit score;

vi. A list of all Consumer Financial Services-related licenses the Applicant has ever applied to the Authority for, whether or not such licenses were issued;

vii. The disclosure of whether there is a previous contractual relationship with an Indian Pueblo; and

viii. A sworn statement that if the License applied for is issued, the Applicant will submit to the jurisdiction of the Pueblo; the Applicant will abide by all applicable Pueblo and Federal laws, regulations and policies; and the information contained in the Application is true and correct to the best of Applicant's knowledge.

ix. Each Application shall be accompanied by an application fee, the amount of which shall be set by the Authority.

3. Review, Issuance and Denial, Term.

A. Consumer Financial Services License. A Consumer Financial Services License shall automatically issue if the following criteria are met:

i. The Applicant complied with the provisions of Section (e)(2);

ii. No owner, partner, officer and/or director; or principal management employee of the Applicant or a shareholder who owns more than ten percent (10%) of the shares of Applicant has been, in any jurisdiction, convicted of a felony or any other crime involving breach of trust or dishonesty in the last ten (10) years from the date of application; been convicted or entered a plea of no contest of any felony or any other crime involving breach of trust or dishonesty in the last

ten (10) years from the date of application; had an order entered against it by an administrative agency based on conduct that involved fraud, deceit or misrepresentation by the Applicant; or had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;

iii. The Consumer Financial Services are authorized pursuant to this Code;

iv. The Consumer Financial Services are authorized by a Tribal Council Resolution; and

v. The Pueblo has the sole ownership interest in the Pueblo's enterprise that provides the Consumer Financial Services.

B. Employee License. Upon compliance with Section (e)(2), the Authority shall review the qualifications of the Applicant sufficient to make a determination of eligibility as required under this Code.

C. Issuance. Upon completion of any necessary background investigation, the Authority may issue a License on a conditional or unconditional basis. The Authority shall have the final word on whether to license an Applicant. Nothing herein creates a property right in the License. The Authority may in its discretion grant a temporary License after submission of a completed application and a preliminary determination of suitability by the Authority.

D. Denial. The Authority, when it does not license an Applicant shall notify the Applicant in writing, provide the basis for the denial of the License, and otherwise comply with the procedural requirements of Section (d)(10) of this Code.

E. Term. Any License issued pursuant to this section shall be effective for a period of two (2) years from the date of issuance. A temporary License may be for such period of time as determined by the Authority, but not to exceed sixty (60) days, with a possible sixty-(60)-day renewal for cause.

F. License Substance and Classification. The License shall bear on its face the name of the Licensee, the Pueblo's logo, the issue date, the license number, and the applicable classification of the License. Subject to this Code, the Authority may issue Licenses that authorize a Licensee to provide all types of Consumer Financial Services under this Code or a limited-purpose License that only authorizes certain types of Consumer Financial Services under this Code. Each License shall specify its scope.

i. Record Retention. The Authority shall maintain the Applicant's file, including applications, background investigation reports, and eligibility determination reports for no less than three (3) years from the date of termination of employment.

4. License Denial, Suspension or Revocation of License.

A. Denial; Temporary Suspension or Revocation. The Authority shall not unreasonably withhold issuance or renewal of a License. The Authority shall deny a License or suspend or revoke a License, after notice and an opportunity for a hearing pursuant to Section (d)(10) herein, if the Authority finds that an Applicant or Licensee:

i. Failed to pay initial Application or renewal fees;

ii. Made a material misstatement or omission on the Application or on any document required to be filed with the Authority;

iii. Withheld or provided incomplete or insufficient pertinent information;

iv. Is not a Person of honesty, truthfulness or good character;

v. Violated or aided, abetted, or conspired with another Licensee or Person or knowingly caused any Licensee or Person to or otherwise participated in violation of this Code or the rules and regulations of the Authority;

vi. Participated in Consumer Financial Services that was not authorized by this Code;

vii. Knowingly falsified books or records that relate to a transaction connected with the operation of Consumer Financial Services;

viii. Failed to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid by a Licensee authorized pursuant to this Code or to substantiate, by the Authority, compliance with this Code;

ix. Failed to take reasonable measures to ensure that an agreement with a consumer is not materially breached;

x. Is insolvent;

xi. Is charged in any jurisdiction with a felony or any other crime involving breach of trust or dishonesty, so long as any temporary suspension is removed if the charges are subsequently dismissed;

xii. Has been convicted or has entered a plea of no contest in any jurisdiction of any felony or any other crime involving breach of trust or dishonesty;

xiii. Has had an order entered against it by an administrative agency of any jurisdiction and the order is based on conduct that involved fraud, deceit or misrepresentation by the Applicant or Licensee and it entered after notice and an opportunity to be heard;

xiv. When the Licensee is a Licensee or Licensee Applicant, has had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;

xv. Employed any Person in a Consumer Financial Services business whom the Licensee knew or should have known was convicted of fraud, theft, or embezzlement;

xvi. Refused to comply with any lawful order, inquiry or directive of the Authority or the Tribal Council;

xvii. Attempted to bribe or offer something of value to any Person, Tribal Council member, or a Commissioner in an attempt to avoid or circumvent Pueblo law;

xviii. Stole or attempted to steal funds or other items of value from the Authority or the Pueblo;

xix. Poses a threat to the public interest or the effective regulation of Consumer Financial Services;

xx. Creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of Consumer Financial Services;

xxi. Was a former Licensee pursuant to this Code whose License was suspended or revoked and not subsequently reinstated; or

xxii. Has demonstrated an inability to manage the Applicant's personal or business finances or demonstrates a sufficient indebtedness in relation to income so as to cause concern for the Applicant's ability to fulfill its responsibilities under this Code.

B. Acts of Controlling Persons. It is sufficient cause for denial, suspension or revocation of a License if an officer, director, partner, employee or controlling person of the Licensee or Applicant acted or failed to act in a manner that if the Licensee or Applicant acted or failed to act in that manner would be cause for denial, suspension or revocation of the License. For purposes of this Subsection, "controlling person" means a person who owns more than twenty-five percent (25%) equity interest in the Licensee or who has the ability to affect one or more significant business decisions of the Licensee or Applicant.

C. Procedure for Suspension or Revocation.

i. Upon reasonable basis for belief that a violation of the Code has occurred, the Authority or its designee may either undertake an investigation of the Licensee, or serve upon such Licensee an order to show cause why the Licensee's License

should not be suspended or revoked, or why the Licensee should not be enjoined from conducting Consumer Financial Services under this Code.

ii. Such notice shall state the reason for the suspension and/or order, and the time and place for the hearing before the Authority pursuant to Section (d)(10) herein.

iii. The Licensee shall have an opportunity to present testimony and cross-examine opposing witnesses, and to present any other evidence as to why a suspension, revocation order or injunction should not be issued.

iv. The hearing shall be governed in all respects in accordance with Pueblo law and Authority regulations. Any suspension or revocation decision of the Authority after hearing may be appealed in accordance with the provisions of Section (d)(10).

5. Renewal.

A. Renewals. A Licensee shall petition to have the License renewed by applying to the Authority for a renewal before the License expires. Applicants may be required to provide updated material as requested.

B. Non-Renewal. The Authority may deny renewal of a License or suspend or revoke a License if the Authority finds the existence of any circumstance listed in Section (e)(4)(A) above, or that any other fact or condition exists that, if it had existed at the time of the original application for the License, would have warranted the Authority to refuse to issue the License.

6. Voluntary Surrender of License. Any Licensee registered pursuant to this Code may voluntarily surrender its License at any time by giving written notice of the surrender to the Authority.

7. Assignment or Transfer. A License is not salable, lendable, transferable or assignable and control of a License shall not be acquired through any stock purchase or other devise without the prior written consent of the Authority. The Authority shall not give consent if the Authority finds that the acquiring Person does not meet the qualifications described in this Code. For the purposes of this Subsection, "control" means the power to vote more than twenty-five percent (25%) of the outstanding voting shares of a licensed corporation, partnership, association or trust.

8. Deposits of Fees and Assessments. Application fees, renewal fees, late payment penalties, civil penalties, administrative fines and other fees or penalties provided for in this Code shall in all cases be paid directly to the Authority. The Authority shall deposit such proceeds into an account or fund designated by the Tribal Council.

(f) Exemptions. The following Persons are subject to Sections (g)(1) and (g)(2) but otherwise exempt from any other provision or application of this Regulatory Code:

1. Any Person providing products or services in support of a Financial Services Licensee business not provided directly to the Financial Services Licensee;

2. Any national or state chartered bank that is insured by the Federal Deposit Insurance Corporation or any subsidiary thereof;

3. Any Person licensed or otherwise authorized to engage in payment processing, money transmission, tax preparation, or the practice of law;

4. Any credit bureau or similar third-party service provider or vendor engaged by a Licensee for purposes of risk assessment or similar pre-origination services.

5. Any other federal insured financial institution and any of their subsidiaries; any employee of the above.

(g) Licensees.

1. Compliance. Licensees shall at all times comply with the provisions of this Code, rules and regulations promulgated pursuant to this Code, and all other Pueblo and federal laws as applicable.

2. Federal Consumer Protection Laws. A Licensee shall conduct business in a manner consistent with the spirit of federal consumer protection law, including, without limitation, the following, as applicable: Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5491-5493; Truth in Lending Act, 15 U.S.C. § 1601 *et seq*., and related regulations at 12 C.F.R. Part 226; Consumer Leasing Act, 15 U.S.C. §§ 1667 *et seq*., and related regulations at 12 C.F.R. Part 213; Fair Credit Billing Act, 15 U.S.C. § 1666a; Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq*., and related regulations at 15 C.F.R. Part 202; Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq*., and related regulations at 12 C.F.R. Part 205; Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq*. and related regulations at 12 C.F.R. Part 222); privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq*., and related regulations at 16 C.F.R. Part 313 and 16 C.F.R. Part 314; Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*., and related regulations at 16 C.F.R. Part 901; Talent Amendment, 10 U.S.C § 987, and related regulations of the Department of Defense at 32 C.F.R. part 232; and Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-596.

3. Prohibited Acts by Licensees.

A. A Person shall not engage in the business of Consumer Financial Services subject to this Code without first obtaining a License pursuant to this Code. A separate License is not required for each location that the Licensee operates and deals in person with the consumers, but each location must be approved in advance by the Authority. The

Financial Services shall post its License issued pursuant to this Code at the each location or, if the location is a website, said License shall be posted electronically on each website. For purposes of this Section (f)(2), the term "location" or "a location" includes a website maintained for the purpose of participating in Consumer Financial Services pursuant to this Code.

B. A Financial Services Licensee shall not:

i. Engage in any financial services other than those allowed under this Code.

ii. Assess any interest, fee, or charge fee that is greater than any applicable limitation, if any, prescribed in this Code.

iii. Use or cause to be published or disseminated any advertisement that contains false, misleading or deceptive statements or representations.

iv. Engage in unfair, deceptive or fraudulent practices.

v. Tie or otherwise condition the providing of Consumer Financial Services to the sale of any good or service by the Licensee.

4. Minimum Internal Control Systems. Each Financial Services Licensee shall maintain a system of minimum internal controls systems regulation as may be promulgated by the Authority.

A. Internal control systems regulation shall be submitted to Licensee for review and comment prior to implementation.

5. Books, Accounts and Records, Examinations, Costs.

A. A Financial Services Licensee shall maintain at each location at which it conducts business all books, accounts and records that the Authority reasonably requires. Each Financial Services License shall:

i. Ensure that the books, accounts and records are sufficiently detailed to comply with the Code and all applicable Pueblo and federal laws.

ii. Maintain the books, accounts and records separately from any other business in which the Licensee is engaged and shall retain the books, accounts and records for at least three years.

B. The Authority may examine or cause to be examined each Financial Services Licensee annually. In conducting such examination, the Authority or its agent may examine the books, accounts and records to determine if the Financial Services Licensee has complied with this Code and any implementing regulations adopted

pursuant to this Code. The Financial Services Licensee shall pay the cost of the examination as may be required by the Authority in accordance with its regulations.

6. Reports.

A. Annual Reports. Every Financial Services Licensee shall file an annual report with the Authority in a time and manner specified by the Authority. Each report shall contain information specified by the Authority sufficient for the Authority to determine compliance with this Code including, at a minimum, the following:

i. The name, address and telephone number of the Licensee;

ii. The names, addresses and titles of all of the current managers of the Licensee;

iii. A sworn statement that the Licensee, to the best of its knowledge, has complied and will continue to comply with all Pueblo and federal laws applicable to Consumer Financial Services; and

iv. The name and address of the agent who will accept service of process on behalf of the Licensee.

7. Audit Requirements. Each Financial Services Licensee shall provide to the Authority annually a copy their financial statements which may be audited or unaudited.

8. Public Notice. Each Financial Services Licensee shall have a copy of this Code and any implementing regulations readily available for inspection by any person at each authorized Consumer Financial Services site.

(h) Authorized Consumer Financial Services Transactions.

1. General Authority. Subject to this Code, a Financial Services Licensee may engage in the business of providing Consumer Financial Services as provided in this Code.

2. General Terms, Conditions, and Practices.

A. Preservation of Tribal Sovereign Immunity and Exclusive Jurisdiction. The consumer must be provided a notice in a form approved by the Authority regarding preservation of tribal sovereign immunity of the Pueblo and of the Authority and exclusive jurisdiction of the Pueblo of Pojoaque Tribal Court and appeals thereto and a consumer's limited and exclusive rights to submit complaints to a tribal dispute resolution process in accordance with this Code and regulations of the Authority.

B. Definitions. As used in this Section:

i. "Business day" means, with respect to the Right of Rescission under Section (h)(2)(B)(vii), all calendar days except Sundays and legal public holidays.

ii. “Closed end credit” means the extension of credit by a Lender to a consumer pursuant to an arrangement or agreement which is not a revolving credit plan.

iii. “Conspicuously displayed” means highlighted through the use of capitalization, bold print, underlining or some combination thereof.

iv. “Installment loan” means a loan between one thousand dollars ($1,000) and twenty-five thousand dollars ($25,000) made to an individual consumer that charges interest and/or fees for which the stated repayment period is greater than sixty (60) days but no longer than five (5) years and is not secured by title to a motor vehicle.

v. “Lender” means a Financial Services Licensee as defined in Subpart R-2(b). In addition, all on-line lenders shall be a commercial entity formed pursuant to Pueblo law to provide essential government revenue and wholly-owned by the Pueblo to serve the interest of the Pueblo and its members.

vi. “Loan” means any extension of closed end credit in connection with a Consumer Financial Services transaction.

vii. “Right of Rescission” means, with respect to any short-term consumer loan or installment loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

viii. “Rollover” means, with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

ix. “Short-term consumer loan” means a loan of two thousand dollars ($2,000) or less made to an individual consumer that charges interest and/or fees for which the stated repayment period is less than sixty (60) days if a "payday" product, and less than two (2) years if an Installment loan and is not secured by title to a motor vehicle.

x. “Workout agreement” means an agreement between an individual consumer and a Lender for the repayment of an outstanding and unpaid indebtedness which requires a net reduction of not less than ten percent (10%) of such indebtedness per payment period.

C. Extension of Credit. Any Lender may, subject to any limitations on lending authority or otherwise imposed by law and subject to the other provisions of this Section, offer and extend closed end credit to a consumer and, in connection therewith,

may charge and collect the interest and other charges permitted by this subpart and may take such security as collateral in connection therewith as may be acceptable to the Lender.

D. Interest. A Lender may charge and collect interest in respect of a loan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the loan provides or as established in the manner provided in such agreement and may calculate such interest by way of simple interest or such other method as the agreement governing the loan provides. If the interest is precomputed it may be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from three hundred and sixty (360) to three hundred and sixty-six (366) days, including or disregarding leap year, as the Lender may determine.

E. Variable Rates. If the agreement governing the loan so provides, the periodic percentage rate or rates of interest charged and collected in respect of the loan may, if the interest is not precomputed and taken in advance, vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid amounts of such loan on and after the effective date of such variation. This section shall not be construed to limit the authority of a Lender to charge and collect interest in respect of a loan in the manner and at the rate or rates authorized in any other section of this subpart. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the consumer to perform in accordance with the terms of the loan agreement.

F. Additional Charges. In addition to or in lieu of interest at a periodic percentage rate or rates permitted by Sections (h)(2)(E) and (h)(2)(F), the Lender may charge and collect, in respect of a loan:

i. If the agreement governing the Loan so provides, charge and collect any other fees or charges, costs, points, premiums and all other expenses which may be assessed by the Lender in connection with the Loan.

ii. If the agreement governing a Loan so provides, a Lender may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default; provided, however, that no more than one (1) such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default. Nothing contained

in this subdivision shall limit, restrict or otherwise affect the right of a Lender under and pursuant to Section (h)(2)(E) this title to change the periodic percentage rate or rates of interest applicable to the loan agreement between the Lender and a consumer upon the occurrence of a delinquency or default or other failure of the consumer to perform in accordance with the terms of the loan agreement;

iii. Such other charges as are set forth in the Agreement governing the loan including, but not limited to, costs, fees, services, points, premiums and all other reasonable expenses which may be incurred by such applicant in connection with a loan. No Lender shall demand, collect or receive from any applicant for a loan, directly or indirectly, any other charges, or any greater amounts for any authorized charges than those permitted by this subpart.

G. Deferred Installments. A Lender may at any time or from time to time permit a consumer to defer installment payments of a loan and may, in connection with such deferral, charge and collect deferral charges.

H. Refinancing.

i. A consumer may, with the consent of the Lender, refinance the entire outstanding and unpaid amount of a loan, and the Lender may charge and collect a refinancing charge in connection with any such refinancing.

ii. For the purposes of this section, the entire outstanding and unpaid amount of a loan shall be deemed to be the total of the unpaid balance and the accrued and unpaid interest and charges on the date of refinancing.

I. Short-Term Consumer Loans and Installment Loans.

i. In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subpart, short-term consumer loans and installment loans shall be subject to the following:

a. No Lender shall make more than six (6) rollovers of an existing short-term consumer loan, provided however, this section does not apply to a disclosed payment schedule of an Installment loan that may provide for interest only payments per the terms of the consumer agreement. A Lender may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the consumer or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.

b. No Lender shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual consumer.

c. No Lender shall pursue or threaten to pursue criminal action against an individual consumer in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.

ii. In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subpart, short-term consumer loans and installment loans shall be subject to the following: No Lender shall make a short-term consumer loan or an Installment loan unless the application for such loan contains a written disclosure, conspicuously displayed, that:

a. The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;

b. Additional fees and interest may accrue if the loan is rolled over or refinanced; and

c. Credit counseling services are available to consumers who are experiencing financial problems.

iii. Nothing in this section prohibits a Lender from refinancing the principal amount of a short-term consumer loan or an installment loan, subject to the limitations and requirements imposed herein.

iv. Every Lender must post on any website a prominent statement that: "This loan is not intended to meet long-term financial needs."

J. Attorney's Fees; Costs. In the event a consumer defaults under the terms of a loan, the Lender may, if the consumer's account is referred to an attorney (not a regularly salaried employee of the Lender) or to a third party for collection and if the agreement governing, or the bond, note or other evidence of, the loan so provides, charge and collect from the consumer a reasonable attorney's fee. In addition, following a consumer's default, the Lender may, if the agreement governing, or the bond, note or other evidence of, the loan so provides, recover from the consumer all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the Lender.

K. Application of Other Laws. Any federal law not applicable to Indian Pueblos or state law limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit under a Loan operated in accordance with this subpart.

L. No Oral Agreements. A Consumer Financial Services transaction may provide that it represents the entire agreement of the parties and may not be contradicted by evidence

of prior, contemporaneous, or subsequent oral agreements of the parties. Such provisions are enforceable and disallow evidence of oral agreements.

M. Enforcement of Licensee's Rights and Remedies. In any proceeding in which a Licensee is a party in interest with respect to any transactions with a consumer, the Licensee's rights and remedies shall be granted based upon prima facie proof and entitlement based upon the terms of the written transaction documents and the payment and business records maintained by the Licensee in the ordinary course of business.

(i) Enforcement.

1. Jurisdiction. Except as provided otherwise in this Code, the Authority shall have jurisdiction over all violations of this Code.

2. Guidelines. In imposing any administrative remedy or civil penalty provided for in this Code, the Authority shall take into account the appropriateness of the remedy or penalty with respect to the size of the financial resources and good faith of the Financial Services Licensee charged, the extent to which the violation was intentional, the gravity of the violation, the history or previous violations, and such other matters as justice may require.

3. Civil Violations. Any Financial Services Licensee who violates or fails to comply with any provision of this Code or who fails or neglects to comply with any final order of the Authority may be charged with a violation and given due process pursuant to Section (d)(10) herein. If the Licensee or Person is found to have committed a violation, he/it may be required to pay a civil fine to the Authority not to exceed five thousand dollars ($5,000) for each violation. Each day during which any such violation or failure to comply continues may be treated as a separate violation of this Code, but not to exceed one hundred thousand dollars ($100,000). A violation or series of violations related to the same act or omission may be treated as one violation.

A. A Financial Services Licensee, or Employee Licensee found responsible for a material violation pursuant to this Section may also be subject to revocation of the Licensee's License.

B. An officer or agent of a business entity who knowingly or recklessly participates in a material violation of this Code may be subject to termination by the Authority.

4. Cumulative Fines. All civil fines accruing under this Code shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages nor bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Licensee, or any other Person.

5. Purpose of Civil Penalties. The civil fines imposed under this Code are intended to be remedial and not punitive and are designed to compensate the Pueblo for the damage done to the peace, security, economy and general welfare of the Pueblo, and to compensate the

Pueblo for costs incurred by the Pueblo in enforcing this Code. The civil fines under this Code are also intended to coerce all people into complying with this Code and Authority regulations and not to punish such people for violation of such laws and regulations.

6. Civil Action for Penalties. In enforcing the civil infraction provisions of this Code, the Authority may proceed, in the name of the Pueblo against a Person for violation of such provision by civil complaint in a court of competent jurisdiction pursuant to the provisions of this Code.

7. Seizure and Forfeiture of Property. Property utilized in violation of this Code shall be subject to seizure and forfeiture by order of the Authority pursuant to such implementing regulations as the Authority shall promulgate.

(j) Resolving Borrower Disputes.

1. General Principles. The Pueblo values its customers and intends, at all times, to see that questions, concerns, issues, and/or disputes raised by consumer borrowers are addressed in a fair and orderly manner. However, nothing in this Section shall be construed as a waiver of the sovereign immunity of the Pueblo or of the Authority or any of the rights and privileges attendant thereto.

2. Initial Dispute Resolution Procedure.

A. Consumers who, in the course of their otherwise lawful and proper use of a Licensee's business, have concerns about the operation of any part of the Licensee's operation that pertain to the borrower or who otherwise believe themselves to be aggrieved by some aspect of the operation of any part of the Licensee's business, shall direct their concerns or dispute in the first instance to the management of the Licensee, either orally or in writing.

B. Upon learning about a dispute, a Licensee shall notify the consumer of his or her right to contact the Authority about the dispute and his or her rights to pursue formal dispute resolution under Section (j)(3). The Licensee shall also expediently gather sufficient facts to make a determination about the dispute. The Licensee shall inform the complainant, either orally or in writing, about its initial determination as soon as is reasonably practicable.

C. Payment and servicing disputes from a consumer regarding the conduct of a Financial Services Licensee are also subject to the terms and conditions of the consumer loan agreement entered by and between the parties, which may provide alternative means of dispute resolution for certain terms of individual consumer loan agreements. However, to the extent a consumer's complaint deals with compliance with this Code, the Authority shall have exclusive jurisdiction.

3. Formal Dispute Resolution Procedure.

A. Complainants who have followed the initial dispute resolution procedure described in Section (j)(2) and who are dissatisfied with a Licensee's initial determination, may request review of the initial determination by the Licensee by submitting a request to the Authority in writing no later than ten (10) days after being informed about the initial determination by the Licensee.

B. In reviewing a dispute, the Authority may rely upon the record created by the Licensee or may perform its own investigation if it finds the record inadequate to make a determination. The Authority shall offer the complainant a fair opportunity to be heard regarding the dispute, in person or through telephonic conference, either before or after the Authority makes its own inquiries. A complainant may be represented by legal counsel at the complainant's own expense. The complainant's opportunity to be heard, if granted, shall take place no less than ten (10) days and no more than sixty (60) days after the Authority receives the complainant's written request. In connection with a dispute, the Authority may conduct and issue such review, interviews, sworn statements, depositions, and other discovery as the Authority requests. In each instance, the Licensee, complainant and other interested persons must cooperate with the Authority and provide such information and documents as the Authority deems necessary or advisable to make a determination.

C. After reviewing and/or investigating (as the Authority finds necessary per (j)(3)(B) above), and within thirty (30) days after affording the complainant an opportunity to be heard (if the complainant chooses), the Authority shall make a written decision on the complainant's written request for review, and shall mail a copy of the opinion to the complainant at his/her last known address. The Authority may grant or deny a consumer complaint and grant or deny such relief, if any, as the Authority determines in its sovereign discretion; provided no monetary relief in excess of one thousand dollars ($1,000) may be granted by the Authority without the express approval of the Tribal Council. The opinion shall inform the complainant that he or she may appeal the Authority's decision as set forth in this Section.

D. A complainant may appeal an Authority opinion by filing a written Petition with the Tribal Court, along with any filing fees, in accordance with Subpart G-10 of the Pueblo of Pojoaque Law and Order Code within twenty (20) days of receiving the Authority's final written decision.

E. The tribal dispute resolution process authorized under this Code is considered by the Pueblo to constitute a petition for redress submitted to a sovereign government, without waiver of sovereign immunity or exclusive jurisdiction, and does not create any binding procedural or substantive rights for a complainant. Any determination by or on behalf of the Pueblo, whether procedural or substantive, shall be made by the Pueblo in its sovereign discretion.

R-3 Professional Athletic Competition Code

(a) Definitions.

1. “Athletic and sporting activity or competition” includes only those events occurring on Pueblo lands and conducted primarily for commercial purposes and for the purpose of generating income to the Pueblo of Pojoaque, promoters, participants, and others.

2. “Commission” or “PPAC” means the Pueblo of Pojoaque Athletic Commission;

3. “Contestant” means a person who engages in unarmed combat for remuneration;

4. “Council” or “Tribal Council” means the governing body of the Pueblo of Pojoaque which is responsible for passing resolutions, setting policy and making decisions;

5. “Foreign co-promoter” means a promoter who has no place of business in New Mexico;

6. “Manager” means:

A. a person who:

i. undertakes to represent the interests of another person by contract, agreement or other arrangement in procuring, arranging or conducting a professional contest or exhibition in which the represented person will participate as a contestant;

ii. directs or controls the activities of an unarmed combatant relating to the participation of the unarmed combatant in professional contests or exhibitions;

iii. receives or is entitled to receive at least ten percent of the gross purse or gross income of any professional unarmed combatant for services relating to the participation of the unarmed combatant in a professional contest or exhibition; or

iv. receives compensation for services as an agent or representative of an unarmed combatant; and

B. does not include a licensed attorney if the attorney's participation in any of the activities described in Paragraph (A) of this Subsection is limited solely to the legal representation of a client who is an unarmed combatant;

7. “Professional boxer” or “professional wrestler” means an individual who competes for money, prizes or purses or who teaches, pursues or assists in the practice of boxing, wrestling or martial arts as a means of obtaining a livelihood or pecuniary gain;

8. “Professional contest” means any professional boxing, wrestling or martial arts contest or exhibition, whether or not an admission fee is charged for admission of the public;

9. “Promoter” means any person, and in the case of a corporate promoter includes any officer, director or stockholder of the corporation, who produces or stages any professional boxing, wrestling or martial arts contest, exhibition or closed circuit television show;

10. “Purse” means the financial guarantee or any other remuneration, or part thereof, for which professional boxers or professional wrestlers are participating in a contest or exhibition and includes the participant's share of any payment received for radio broadcasting, television or motion picture rights;

11. “Ring official” means any person who performs an official function during the progress of a contest or exhibition;

12. “Unarmed combat” means boxing, wrestling, martial arts or any form of competition in which a blow is usually struck that may reasonably be expected to inflict injury; and

13. “Unarmed combatant” means:

A. a person who engages in unarmed combat in a contest or exhibition, whether or not the person receives remuneration, including a wrestler, boxer, mixed martial a1iist or other contestant; or

B. an amateur boxer who is registered with United States amateur boxing, incorporated, or any other amateur organization recognized by the Commission and participates in an amateur boxing contest or exhibition in a state that is registered and sanctioned by United States amateur boxing, incorporated or golden gloves of America.

(b) Commission Created; Purpose; Authorities and Restrictions. There is created the “Pueblo of Pojoaque Athletic Commission,” a governmental regulatory subdivision of the Pueblo of Pojoaque.

1. Purpose. The purpose of the Commission is to regulate the conduct of each athletic and sporting activity or competition that is authorized by the Tribal Council to be conducted. The PPAC shall be responsible for the regulation and licensure of any athletic and sporting activity or competition which occurs on Pueblo of Pojoaque lands to ensure that the conduct of such activity comports with all Athletic Commission Rules and Regulations and laws of the Pueblo of Pojoaque.

2. Location and Place of Business. The PPAC may maintain its principal place of business and office within the Pueblo’s government offices, or as otherwise may be determined by the Commission to be in the best interest of the Pueblo.

3. Duration. The Commission shall have perpetual existence and succession in its own name, unless dissolved by the Tribal Council pursuant to the laws of the Pueblo.

4. Attributes. As a governmental subdivision of the Pueblo, the Commission is under the direction and control of the Council, and it is the purpose and intent of the Council that the

operations of the Commission be conducted on behalf of the Pueblo for the sole benefit and interests of the Pueblo, its members and residents of and visitors to the Pueblo's jurisdictional land.

A. Arm of the Pueblo. In carrying out its purposes under this Subpart, the Commission shall function as an arm of the Pueblo.

B. Pueblo Actions. Notwithstanding any authority delegated to the Commission, the Pueblo reserves to itself the right to bring suit against any person or entity in its own right, on behalf of the Pueblo or on behalf of the Commission whenever the Pueblo deems it necessary to protect the sovereignty, rights and interests of the Pueblo or the Commission.

C. Privileges and Immunities of the Pueblo. The Commission shall possess all of the privileges and immunities of the Pueblo.

D. Privileges and Immunities for Tax Purposes. The Commission and its assets and activities shall have the same privileges and immunities from federal, state, and local government taxation as the Pueblo and its assets and activities. As a political subdivision of an Indian tribal government, the Commission shares the same tax status as the Pueblo for federal, state and local tax purposes.

5. Sovereign Immunity of the Pueblo of Pojoaque Athletic Commission.

A. Immunity from Suit. The Commission shall possess all the privileges and immunities of the Pueblo and its assets, except as otherwise specifically limited by Tribal Council, including sovereign immunity from suit in any tribal, federal or state court.

B. Waiver of Sovereign Immunity of the Commission. Sovereign immunity of the Commission may be waived only by express resolution of the Tribal Council.

i. Resolution Effecting Waiver. All waivers of sovereign immunity must be in written Tribal Council resolutions of continuing force and effect issued by the Tribal Council.

ii. Policy on Waiver. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Commission or the Pueblo.

iii. Limited Nature of Waiver. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Commission subject thereto, and the court having jurisdiction pursuant thereto and law applicable thereto.

6. Assets of the Commission. The Commission shall have only those assets specifically assigned to it by the Council, acquired in its name by the Pueblo, or acquired by the Commission on its own behalf. No activity of the Commission or any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Pueblo not assigned in writing to the Commission.

7. Authorized Athletic and Sporting Activities or Competitions.

A. Only those sporting activities expressly authorized and regulated by the Commission, or as may be authorized from time to time by the Council, shall be conducted on the Pueblo. Any sporting activity conducted in violation of this Subpart shall be subject to prosecution or civil forfeiture of sales and other revenues generated by such event.

B. The Commission shall permit and shall regulate only those athletic and sporting activities or competitions specifically authorized by the Council and as permitted by applicable law. The following sporting activities are authorized by the Tribal Council:

i. Boxing, amateur and professional;

ii. Wrestling, amateur and professional; and

iii. Mixed martial arts (MMA), amateur and professional.

(c) Establishment; Qualifications; Removal; Budget.

1. Establishment of the Pueblo of Pojoaque Athletic Commission. The Council shall appoint the members of the PPAC for terms of two (2) years each, or until resignation, removal, or until the Council re-appoints members or appoints their replacements. The PPAC shall consist of five members appointed by the Council at its discretion.

2. Commission Qualifications; Removal from Office. Commission members may be removed by the Council, at the will of the Council. Members shall not be involved in the promotion of sporting activities on Pueblo of Pojoaque lands during their term of office.

3. Budget; Staff. It is expected that the Commission shall be self-supporting, either through the assessment of licensing fees or the assessment of other charges against athletic and sporting activities or competitions regulated by the Commission. The Commission may hire staff as necessary and appropriate, and as the Commission's budget permits. Any staff shall be employees of the Pueblo of Pojoaque, subject to the Pueblo's personnel policies.

4. The Commission may adopt rules and regulations for the administration of this Code not otherwise inconsistent with the laws of the Pueblo of Pojoaque or applicable federal law. All rules and regulations shall be kept on file at the Commission offices and provided to the public upon request. The rules and regulations shall include, but not be limited, to the:

A. number and qualifications of ring officials required in a professional contest;

B. powers, duties and compensation of ring officials; and

C. qualifications of licensees.

5. The Commission shall prepare all forms of contracts between sponsors, licensees, promoters and contestants.

(d) Jurisdiction of Commission Over Professional Contests. The Commission shall have sole direction, management, control and jurisdiction over all professional contests to be conducted, held or given within the Pueblo of Pojoaque, and no professional contest shall be conducted, held or given within the exterior boundaries of the Pueblo except in accordance with this Code and the laws of the Pueblo of Pojoaque.

(e) Jurisdiction of Commission Over Unarmed Combat Contests.

1. The PPAC shall have sole direction, management, control and jurisdiction over all contests or exhibitions of unarmed combat to be conducted, held or given within the Pueblo of Pojoaque, and no contest or exhibition may be conducted, held or given within the Pueblo except in accordance with the provisions of this Code and the laws of the Pueblo of Pojoaque.

2. Any contest involving a form of Oriental unarmed self-defense must be conducted pursuant to rules for that form that are approved by the Commission before the contest is conducted, held or given in the Pueblo.

(f) Licenses to Conduct Professional Contests.

1. The Commission may issue licenses to conduct, hold or give a professional contest to any promoter under such terms and in accordance with such rules as the Commission may adopt.

2. Any application for such a license shall be in writing and shall correctly show the promoter. The application shall be accompanied by the annual fee prescribed by law.

3. Before any license is granted to a promoter, the promoter must file a bond in an amount fixed by the Commission with good and sufficient surety and conditioned for the faithful performance by the promoter of the provisions of this Code.

(g) Licenses for promoters, boxers, wrestlers, trainers, ring officials and others.

1. All promoters, foreign co-promoters, matchmakers, professional boxers, professional wrestlers, managers, seconds, announcers, referees, trainers, booking agents and timekeepers shall be licensed by the Commission.

2. No person shall be permitted to participate, either directly or indirectly, in any professional contest unless such person shall have first procured a license from the Commission.

(h) License fees. The PPAC shall set an annual license by December 1st to be effective January 1st the following calendar year. Every license shall expire at midnight on December 31 of the year in which the license is issued.

(i) Real party in interest. The Commission shall not issue any license for a professional contest unless it is satisfied that the promoter is the real party in interest and intends to conduct, hold or give such contests himself, or unless the promoter receives at least twenty-five percent of the net receipts. A license may be revoked at any time if the Commission finds that the promoter is not the real party in interest.

(j) Suspension; Revocation of Licenses.

1. The Commission may suspend or revoke any license when in its judgment the licensee:

A. participated in any sham or fake professional contest;

B. fails to give his best efforts in a professional contest;

C. is guilty of any foul or unsportsmanlike conduct in connection with a professional contest; or

D. participates in an event while under the influence of illegal drugs.

2. Before revocation of a license, the Commission shall afford the licensee opportunity for a hearing, and upon request of the licensee and after reasonable notice, the Commission shall conduct a hearing on the revocation, permitting the licensee to appear personally and by counsel, introduce evidence and examine and cross-examine witnesses.

3. A majority vote of the members of the Commission is required to revoke a license.

(k) Contracts.

1. Every professional boxer or professional wrestler competing in a professional contest shall be entitled to receive a copy of a written contract or agreement approved as to form by the PPAC binding a licensee to pay the professional boxer or professional wrestler a certain fixed fee or percentage of the gate receipts.

2. One copy of such contract or agreement shall be filed with the Commission and one copy shall be retained by the licensee or promoter of the professional contest.

(l) Insurance. The Commission may by rule require insurance coverage for each licensed professional boxer or professional wrestler to provide for medical, surgical and hospital care for injuries sustained while preparing for or engaged in a professional contest payable to such boxer or wrestler as beneficiary.

(m) Advances Against Contestant's Purse. No promoter or foreign co-promoter shall pay or give any money to a licensee before any professional contest as an advance against a contestant's purse or for a similar purpose, *except that* a promoter may, with the prior written consent of the Commission, pay or advance to a contestant necessary expenses for transportation and maintenance in preparation for a professional contest.

(n) Withholding of Purse.

1. The Commission may order a promoter to withhold any part of a purse or other funds belonging or payable to any contestant, manager or second if, in the judgment of the Commission, the contestant is not competing honestly or to the best of his skill and ability or if the manager or second has violated any of the provisions of this Code or any rule promulgated thereunder.

2. This section does not apply to any professional wrestler who appears not to be competing honestly or to the best of his skill and ability.

3. Upon the withholding of any part of a purse pursuant to this section, the commission shall immediately schedule a hearing on the matter as promptly as possible. If it is determined that such contestant, manager or second is not entitled to any part of his share of the purse or other funds, the promoter shall turn such money over to the Commission and it shall become forfeit to the Pueblo and be disposed of as are fees.

(o) Attendance at Weigh-ins; Medical Examinations; Professional Contests.

1. A member of the Commission shall be present at all weigh-ins, medical examinations and professional contests and shall see that the provisions of this Code and the rules made pursuant thereto are strictly enforced.

2. Every participant in a professional boxing contest shall be present and weighed in no later than twelve o'clock noon on the day of the professional contest.

(p) Length of professional contests; Rounds. No professional boxing contest shall be more than fifteen rounds in length, and each round shall not exceed three minutes in length. There shall be a one-minute rest between rounds. The Commission shall adopt rules governing the length of professional wrestling contests, duration of rounds and the period of rest between rounds.

(q) Minors; Participants. No person under the age of majority shall participate in or be licensed for any professional contest.

(r) Regulatory fees on promotions.

1. In addition to any other taxes or fees provided by law, there is imposed upon every promoter for the privilege of promoting a professional contest a regulatory fee in an amount determined pursuant to the rules of the Commission to be sufficient to cover the costs of regulating the contest.

2. The Commission shall adopt rules for the administration, collection and enforcement of the fee imposed pursuant to this section.

3. As used in this section, "total gross receipts of any professional contest" includes:

A. the gross price charged for the sale, lease or other exploitation of broadcasting, television or motion picture rights of the professional contest without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;

B. the face value of all tickets sold and complimentary tickets issued; and

C. any sums received as consideration for holding a professional contest at a particular location.

(s) Time of Payment of Regulatory Fee.

1. Any person upon whom the regulatory fee is imposed shall, within seventy-two hours after the completion of any professional contest for which an admission fee is charged and received or a contribution is requested and received, furnish to the Commission a written report on forms prescribed by the Commission showing:

A. the number of tickets sold and issued or sold or issued for the professional contest;

B. the amount of the gross receipts or value thereof;

C. the amount of gross receipts derived from the sale, lease or other exploitation of broadcasting, motion picture or television rights of the professional contest, without any deductions for commissions, brokerage fees, distribution fees, adve1tising or any other expenses or charges; and

D. such other matters as the commission may prescribe.

2. The Commission may inspect the books, ticket stubs or any other data necessary for the proper enforcement of the regulatory fee and supervisory fee.

(t) Supervisory Fee on Closed-circuit Telecasts or Motion Pictures; Report to Commission.

1. Any person who charges and receives an admission fee for exhibiting any live professional contest on a closed-circuit telecast or motion picture shall, within seventy-two

hours after the event, furnish to the Commission a verified written report on a form prescribed by the Commission showing the number of tickets sold and issued or sold or issued and the gross receipts for the exhibition without any deductions.

2. There is imposed a supervisory fee upon the privilege of exhibiting for an admission fee any live professional contest on a closed-circuit telecast or motion picture. A supervisory fee is imposed in an amount determined pursuant to the rules of the Commission to be sufficient to cover the costs of supervising the exhibition; provided that the fee shall not exceed five percent of the gross receipts derived from the exhibition.

(u) Protective Headgear Required in all Amateur Boxing. No person shall permit, sponsor or promote any amateur to train as a boxer, engage in boxing matches or compete in boxing events without wearing protective headgear meeting the standards approved under the official rules of the USA Amateur Boxing Federation.

R-4 Tort Claims

(a) Purpose. To provide a forum for a Person injured by a negligent act or omission of a Tribal Corporation by establishing a limited waiver of the Tribal Corporation's sovereign immunity.

(b) Policy. Pursuant to Subpart J-3, the Pueblo only authorizes waivers of the sovereign immunity of a Tribal Corporation that are approved by the Tribal Council and that are written, express, and unequivocal.

(c) Findings and Declarations.

1. The Pueblo is an inherently sovereign, federally recognized Indian tribe. Sovereignty includes the right to self-govern and immunity from suit absent Congressional abrogation or a written, express, and unequivocal waiver by the Pueblo.

2. Tribal sovereign immunity protects tribes from suits and court process involving commercial activities, whether conducted on or off Indian lands.

3. Tribal sovereign immunity protects tribal corporations owned by a tribe and created under its own laws, absent an express and unequivocal waiver of immunity by the tribe or Congressional abrogation.

4. Sovereign immunity protects the Pueblo and its limited resources by preventing the Pueblo, a Tribal Corporation, Tribal Officials, or any employee, agent or representative of the Pueblo or of a Tribal Corporation, from being sued without the consent of the Pueblo, so that the Pueblo may provide valuable governmental services and commercial activities for the benefit of the Pueblo, its Tribal Members and the community.

5. The Pueblo and its instrumentalities engage in commercial activities through the ownership or operation of Tribal Corporations. The Pueblo and its Tribal Members benefit from these commercial activities, which promote contact between business invitees and

consumers with Persons acting on behalf of a Tribal Corporation. Such contact has the potential to cause Property Damage or Personal Injury in the event of a negligent act or omission of a Tribal Corporation.

6. The Pueblo finds that it is necessary and desirable to waive the sovereign immunity of its Tribal Corporations from time to time in a prudent, limited and express manner, as specified in this Subpart, in order to engage in commercial activities for the benefit of the Pueblo, its Tribal Members and the community.

(d) Definitions. In addition to the definitions provided for in Subpart A-3,

1. "Claim" or "Tort Claim" means a claim of Personal Injury or Property Damage to a Person proximately caused by an act or omission of a Tribal Corporation.

2. "Collateral Source" means benefits received or receivable from an insurance policy; benefits payable pursuant to a contract with a health care corporation, dental care corporation, or health maintenance organization; employee benefits; social security benefits; worker's compensation benefits; or Medicare/Medicaid benefits.

3. "Dangerous Condition" is a physical aspect of a facility or the use thereof which constitutes an unreasonable risk to human health or safety. A Dangerous Condition shall not exist solely because the design of any facility is inadequate nor due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of a natural physical condition.

4. "Person" means a natural person.

5. "Personal Injury" means bodily harm, sickness, or disease sustained by a Person, including death resulting from any of these.

6. "Petitioner" means the party who files a civil petition.

7. "Property Damage" means damage to, destruction of, or loss of use of tangible property.

8. "Pueblo law" means the laws, policies, regulations and customs of the Pueblo of Pojoaque, including but not limited to those codified in the Pueblo of Pojoaque Law and Order Code, Tribal Court decisions, and all resolutions and ordinances adopted by the Tribal Council, and all resolutions adopted by the Tribal Corporations, and all of these, as they may be amended from time to time.

9. "Tribal" means of or relating to the Pueblo of Pojoaque.

10. "Tribal Corporation" means a duly chartered corporation, whether chartered pursuant to Tribal, federal or state law, owned in whole or in part by the Pueblo.

(e) Limited Waiver of Sovereign Immunity.

1. The sovereign immunity of a Tribal Corporation is hereby waived for the sole and limited purpose of bringing forth certain Tort Claims made in accordance with this Subpart. This waiver is subject to all of the restrictions, limitations and procedures set forth in this Subpart. This Subpart is to be strictly construed.

2. The Pueblo consents to suit against the Tribal Corporation in the Tribal Court for suits based on Tort Claims under this Subpart. The Pueblo does not consent to suit in any other forum for such Claims and expressly preserves and retains its sovereign immunity to any tort suit filed in any other forum.

3. A Tribal Corporation's immunity from suit shall remain intact except to the limited extent that it is waived by this Subpart.

4. In the case of any Claim wherein it is alleged an injury was caused by the act or omission of a Tribal Corporation, any judgment, order or award allowed by this Subpart shall be entered only against such Tribal Corporation.

5. A Tribal Corporation's authority to enter into contracts containing a clear and unequivocal waiver of the Tribal Corporation's sovereign immunity, determined pursuant to the principles of Pueblo law and contract law, is not limited or altered in any way.

6. This Subpart does not constitute, and shall not be construed or interpreted to constitute, a waiver of sovereign immunity of the Pueblo as to any act or omission of the Pueblo. The Pueblo possesses and is legally entitled to sovereign immunity from liability for Tort Claims whether or not within the scope of this Subpart. By adoption of this Subpart, the Pueblo does not waive the Pueblo's sovereign immunity in any respect, and only authorizes a waiver of the Tribal Corporations' sovereign immunity within the narrow set of circumstances expressly provided in this Subpart.

(f) Jurisdiction. The Pueblo of Pojoaque Tribal Court shall have exclusive jurisdiction over all Claims brought pursuant to this Subpart. By filing a Tort Claim pursuant to this Subpart, a Petitioner consents to the jurisdiction of the Pueblo and is subject to all civil laws of the Pueblo.

(g) Procedure for Giving Notice of Claim. No action may be brought in the Pueblo of Pojoaque Tribal Court under this Subpart and no Claim shall be valid under this Subpart unless the Petitioner has sent advance written notice of the Claim.

1. Notice of Claim. To be valid, the written Notice of Claim required by this Subsection shall have been given no later than one hundred and eighty (180) days after the act or omission that gave rise to the injury occurred.

2. The written notice of Claim does not constitute the filing of a lawsuit in Tribal Court.

3. A Person alleging injuries shall send a written notice of the Claim to the Tribal Corporation at the addresses of Pueblo of Pojoaque Legal Department, 58 Cities of Gold Road, Suite 5, Santa Fe, NM 87506, Attn: Chief Legal Counsel; and to the Chief Executive Officer of the Tribal Corporation at the appropriate address.

4. In addition to filing a lawsuit in Tribal Court, the Person shall write a Notice of Claim which shall include the following:

A. The name, current address and telephone number of the Person making the Claim and the name, current address and telephone number of the Person's attorney, if any; and

B. A concise statement describing the location, conduct, circumstances, or other facts which brought about the injury; describing the injury; stating the time and place of injury; stating the name of the Tribal Corporation involved, and the name, address and telephone number if known, of any other Person involved or who has knowledge of the conduct, circumstances, facts or injury; and stating that amount of damages claimed.

(h) Court Proceedings.

1. Any Claim filed pursuant to this Subpart is not a Claim against the Pueblo, its officers or employees, or the insurance carrier for the Pueblo.

2. All proceedings shall be only before the Tribal Court, and there shall be no right to a trial by jury.

(i) Limitations on Damages. Any judgment, order or award for any Claim that proceeds pursuant to this Subpart shall comply with the following limitations:

1. No Claim or award for declaratory, equitable or injunctive relief;

2. No award for exemplary, punitive, consequential or incidental damages;

3. No award for attorney fees;

4. No award for loss of consortium;

5. No award for pain and suffering or mental anguish;

6. No award for pre-judgment interest;

7. No award for Claims outside the express coverage of the Tribal Corporation's liability insurance, including deductible amounts, except as specifically provided in any intergovernmental agreement involving the activities of a Tribal Corporation and in effect at the time of any incident giving rise to the Tort Claim;

8. No award shall exceed:

A. $200,000.00 for Property Damage arising out of a single occurrence;

B. $300,000.00 for all past and future medical and medically related expenses arising out of a single occurrence;

C. $400,000.00 to any Person for any number of Claims arising out of a single occurrence for all damages permitted under this Subpart;

D. $750,000.00 for all Claims by all Persons arising out of a single occurrence; and

9. Any claim of theft or negligence by a hotelkeeper or hotel employees are subject to the provisions of Subpart J-15.

(j) Limitations on Waiver of Sovereign Immunity; Exceptions. Notwithstanding any other provision of this Subpart, the Pueblo does not waive sovereign immunity of any Tribal Corporation for any action or Claim for any injury alleged to have resulted from any:

1. Exercise or performance of, or the failure to exercise or perform, a discretionary function or duty, or the implementation or failure to implement decisions by any Tribal Corporation whether or not the discretion was abused in any such matter;

2. Exercise or performance of, or the failure to exercise or perform, a discretionary function or duty, including planning and operational decisions or omissions based on policy judgment, including but not limited to negligent hiring and retention;

3. Exercise or performance or the failure to exercise or perform an administrative or licensing function;

4. Except as to Subpart J-15, Claims founded upon a statutory provision of Pueblo law;

5. Disputes over casino winnings;

6. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval or other authorization;

7. Claims under a strict liability tort theory or breach of warranty theory;

8. Claims subject to the Federal Tort Claims Act, codified in 28 U.S.C. §§ 1346(b), 2671-2680 and 25 U.S.C. §450(f), or was otherwise covered by the Act. In all such cases the Federal Tort Claims Act shall provide the sole and exclusive remedy;

9. Claims based on the failure to enforce a law, to perform or the failure to perform an act or service, or to afford adequate protection, if the failure is reasonable under the circumstances then existing;

10. Claims within the scope of the Tribal Corporation's worker's compensation system, provided however, if the Employee has an independent Tort Claim not covered by the Tribal Corporation's worker's compensation system, that Tort Claim may be brought under this Subpart;

11. Injuries sustained arising out of and in the course of employment of a Person who is not an Employee of a Tribal Corporation, which are covered by, or eligible for, benefits under another worker's compensation system;

12. Claims arising out of conduct which exceeds the actor's scope of employment or authority;

13. Claims based on a natural condition of property or a Dangerous Condition on property of a Tribal Corporation that was not caused by an individual's negligent or other wrongful conduct and of which the Tribal Corporation did not have notice, either actual or constructive, and adequate opportunity to protect or warn against;

14. Claims by any Person present on the Tribal Corporation's property or facilities for activities not related to a Tribal Corporation's business;

15. Claims for loss due to theft or other intentional or criminal act, unless such Claim arises pursuant to the provisions of Subpart J-15; or

16. Claims based upon the act or omission of an independent contractor or an employee or agent of an independent contractor.

(k) Exclusive Remedy.

1. This Subpart provides the exclusive remedy with respect to a Tort Claim against a Tribal Corporation for Personal Injury or Property Damage and displaces any other possible remedy regarding a Tort Claim, whether at general law, by regulation or ordinance, or otherwise, except as otherwise provided by Pueblo law.

2. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter is precluded without regard to when the act or omission occurred.

3. Judgment as Bar. Other than by appeal pursuant to Subpart B-5, the judgment in an action under this Subpart shall constitute a complete bar to any action by the Petitioner, by reason of the same subject matter, against a Tribal Corporation whose act or omission gave rise to the Claim.

4. A Claim pursuant to this Subpart may be considered abandoned and not be eligible for an award of any kind if a concurrent action seeking damages based on a Tort Claim theory for an injury arising from the same incident is pending in any other court. The Court may authorize a Claim to be filed under this Subpart if the Person making the Claim dismisses

with prejudice the action pending in the other jurisdiction in a timely manner so as to prevent the Tribal Corporation from incurring expenses and efforts. If a Person making a Claim under this Subpart has received a judicial determination for an injury based on a Tort Claim theory in any other jurisdiction, a Claim under this Subpart is forever barred.

(l) Collateral Source Benefits.

1. In a suit under this Subpart in which a Petitioner seeks to recover for the expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity, or other economic loss, evidence to establish that the expense or loss was paid or is payable, in whole or in part, by a Collateral Source shall be admissible to the Tribal Court.

2. The Tribal Court shall determine the amount of the Petitioner's expense or loss which has been paid or is payable by a Collateral Source.

3. If the Tribal Court determines that all or part of the Petitioner's expense or loss has been paid or is payable by a Collateral Source, the Tribal Court shall reduce that portion of the judgment which represents damages paid or payable by a Collateral Source by an amount equal to the sum as determined by the Court. This reduction shall not exceed the amount of the judgment for economic loss or that portion of the findings of the verdict which represents damages paid or payable by a Collateral Source.

4. Benefits from a Collateral Source shall not be considered payable or receivable unless the Tribal Court makes a determination that there is a previously existing contractual or statutory obligation on the part of the Collateral Source to pay the benefits.

(m) Statute of Limitations. In accordance with the provisions in Subpart G-6(a), any action against a Tribal Corporation shall be forever barred, unless such action is commenced within one (1) year after the date of the occurrence resulting in Personal Injury or Property Damage, except that a minor under the age of seven (7) years shall have until his/her ninth (9) birthday in which to file. This provision applies to all Persons regardless of minority or other legal disability.

(n) Inconsistent Law. To the extent that this Subpart provides procedures or limitations that are distinct from any other Pueblo law governing Tort Claims against a Tribal Corporation, this Subpart shall govern.

(o) Severability. If any section of this Subpart is invalidated by the Pueblo Courts, all valid parts shall remain in effect.

(p) Date of Effectiveness. This Subpart shall apply only to Claims that arise from an act or omission that occurs after the date this Subpart is adopted by the Tribal Council.

R-5 Economic Development Plan Ordinance

(a) Authority. The Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (NM Statute Sections 5-10-1 through 5-10-13 1978). This Ordinance is adopted as part of the Pueblo of Pojoaque's economic development plan.

(b) Purpose.

1. The purpose of the Economic Development Plan Ordinance is to allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of the Ordinance is to allow the Pueblo of Pojoaque to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects.

2. Local Economic Development Act.

A. Local governments are allowed to provide direct or indirect assistance to qualify business to implement economic development plans and projects. Further, more local and regional governments have the authority to contribute assets to development projects. However, the imposition of a tax must be approved by the voters in referendum.

B. Eligible uses: Municipalities may impose municipal infrastructure gross receipts tax and dedicate the revenue for economic development projects. A total of 0.25% tax (in four increments of 0.0626%) may be imposed.

(c) Definitions.

1. "Economic development project" means the provision of direct or indirect land, buildings or other infrastructure; public works improvements essential to the location assistance of a qualifying business and includes the purchase, lease, grant, or construction, reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement or plan a project.

2. "Qualifying entity" means an existing or proposed corporation, limited liability business, partnership, joint venture, syndicate, association or other person that is one, or a combination of two or more of the following:

A. An industry for manufacturing, processing, or assembling of any agricultural or manufactured products;

B. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining, or industry, but other than provided in Paragraph D of this subsection, not including any enterprise for sale of goods or commodities at retail or

for the distribution to the public of electricity, gas, water, or telephone or other services commonly classified as public utilities;

C. A business in which all or part of the activities of the business involves the supplying of services to the general public or to government agencies or to a specific industry or customer, but, other than provided in Paragraph D of the subsection, not including business primarily engaged in the sale of goods or commodities at retail; or

D. A telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico.

3. "Project participation agreement" means an agreement between a qualifying entity and the Pueblo of Pojoaque whereby the Pueblo provides assistance to an economic development project in exchange for the benefits received as set forth in this Ordinance.

4. "Governing body" means the Tribal Council.

(d) Economic Development Plan.

1. The authorized Tribal representative, after approval of the governing body, may assist economic development projects in any legally permissible manner, including but not limited to provisions of land, buildings and infrastructure; provided that all the requirements of this Ordinance are met. The Pueblo of Pojoaque may provide land, buildings or infrastructure it already owns, or may build, purchase or lease the facilities needed for an economic development project. The Pueblo of Pojoaque, at its discretion, may also contribute to the payment of costs for professional service contracts such as industry feasibility studies, and planning and design needed to implement a project.

2. The governing body may consider offering all forms of assistance allowed under this Ordinance and any other legally permissible forms of assistance. However, this does not establish any obligation on the communities' part to offer any specific type or level of assistance.

(e) Tribal Economic Development Corporation.

1. The governing body assigns the Tribal Economic Development Corporation Board of Directors the following responsibilities with regard to the economic development plan for the Pueblo of Pojoaque:

A. Reviewing and making recommendations to the governing body on applications for assistance for economic development projects; and

B. Reviewing and making recommendations to the governing body on applications for industrial revenue bonds (IRBs).

2. The Tribal Economic Development Corporation shall at all times provide for a Board of Directors position for the Pueblo of Pojoaque. The Tribal authorized representative shall appoint a member of the Board of Directors with the advice and consent of the Tribal Council.

(f) Application Requirements.

1. Any qualifying entity may propose an economic development project to the Pueblo of Pojoaque. Meeting the definition of a qualifying entity does not create any obligation on the part of the Pueblo of Pojoaque.

2. Applications from qualifying entities shall be submitted to the Pueblo of Pojoaque on forms provided by the Pueblo.

3. Applications shall contain the following information for business applicants:

A. Identification information:

i. Complete name and address of entity;

ii. Incorporation papers with by-laws;

iii. List of board of directors and executive director, with addresses; and

iv. Resumes of all directors and officers.

B. Evidence of financial solvency:

i. Financial statements (income statements and balance sheets) for the past three years;

ii. Federal Tax number, New Mexico State Taxation and Revenue number and county business license; and

iii. Projected income statement for at least three years.

C. Evidence of organizational capacity:

i. Brief history of the entity;

ii. Organizational chart of the entity; and

iii. Business Plans for the entity and proposed project (shall include pro-forma cash flow analysis).

D. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.

(g) Applicable Review Criteria.

1. Applications for economic development projects requesting assistance from the Pueblo of Pojoaque, which meet the policies and objectives of the communities' economic development plan, shall receive priority. Examples include, but are not limited to:

A. Manufacturing firms (including intellectual property such as computer software);

B. Projects that enhance the exporting capacity of business and/or provide goods and services that currently have to be imported into the Pueblo;

C. Private businesses seeking to build, expand, or relocate;

D. Private businesses that provide facilities or services that enhance the ability of the Pueblo of Pojoaque;

E. Name of the Tribal Communities' businesses to operate;

F. Organizations, which assist business start-ups or bring small businesses together to increase their competitive abilities. This must involve a tangible project, which will create jobs and promote an industry. Examples include, but are not limited to:

i. Business incubators;

ii. Art incubators or coalitions (e.g., a performing arts coalition seeking construction, rehearsal, or performance facilities);

iii. Public markets for farmers, gardeners, crafts, etc.; and

iv. Organizations that foster economic development by promoting workforce development efforts such as apprenticeships or other job training programs.

G. Projects in industry clusters listed above are encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives; and

H. Qualifying entities with existing contracts or projects with the community when this plan is adopted may propose a restructuring of their projects as an economic development project.

2. All applications for economic development projects requesting economic assistance from the community shall submit a cost-benefit analysis. Preparing a cost-benefit analysis will be the responsibility of the applicant. The Pueblo of Pojoaque retains the right to specify a format and methodology for the cost-benefit analysis. The Tribal Economic

Development Corporation shall review and approve the methodology used. The source and rationale for any multiplier effects shall be identified. The cost-benefit analysis shall show that the Pueblo of Pojoaque will recoup the value of its donation within a period of ten (10) years. The analysis shall address the following:

A. The number and type of jobs to be created—both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job categories);

B. Pay scale of jobs;

C. Determination of which jobs are expected to be filled locally and which will be filled by transfers from other facilities or recruited from outside the Pueblo of Pojoaque areas;

D. Total payroll expected to start-up and after one year;

E. Anticipated impact on local tax base; and

F. Anticipated impact on local school systems.

3. All applicants for economic development projects requesting economic assistance from the Pueblo of Pojoaque shall require the same review required of industrial revenue bond applications. This review shall focus on environmental and community impacts of proposed projects. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for the Pueblo of Pojoaque area residents. Cultural impacts of projects shall also be considered.

4. Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees.

5. All applicants for economic development projects requesting economic assistance from the Pueblo of Pojoaque shall clearly demonstrate the benefits that will accrue to the community as a result of the donation of public resources. The Pueblo of Pojoaque has considerable flexibility in determining what is considered as adequate benefits. Benefits such as providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in a regional economy, may be recognized. The benefits claimed on any proposal will receive careful scrutiny. However, it is the intent of this Ordinance to be flexible in the evaluation of these benefits, and to recognize the qualitative, as well as quantitative, impact of a proposal.

6. All applicants for economic development projects requesting assistance from the Pueblo of Pojoaque shall clearly demonstrate how the qualifying entity is making a substantive contribution. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property, or other things or services of value for the expansion or improvement of the economy. The Pueblo of Pojoaque retains flexibility in

defining the "substantive contributions." The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or cash donations may be required. Assistance in providing affordable housing to its employees or the community at large may also be considered. Contribution for a given project shall be at the discretion of the governing body.

(h) Public Safeguards.

1. All economic development projects receiving assistance from the Pueblo shall be subject to an annual performance review conducted by the Pojoaque Pueblo Enterprise Corporation. This review shall evaluate whether the project is achieving the goals and objectives set forth in the project participation agreement. This review shall be presented to the governing body for consideration. The governing body at a public hearing may terminate assistance to the economic development project by provisions set forth in the agreement, which terminates the agreement and specifies the disposition of all assets and oblations of the project.

2. The Pueblo of Pojoaque shall retain a security interest, which shall be specified in the project participation agreement. The type of security interest will depend on the nature of the economic development project and assistance provided by the Pueblo of Pojoaque. Types of security may include, but are not limited to:

A. Letter of credit to the Pueblo of Pojoaque;

B. Performance bond equal to the Pueblo of Pojoaque contribution;

C. A mortgage or lien on the property or equipment;

D. Pro-rated reimbursement of donation if business reduces workforce or leaves the community before the term agreed to; or

E. Other security agreeable to both parties.

3. Should a qualifying entity move, sell, lease, or transfer a majority interest in the economic development project before the expiration of the project participation agreement, the Pueblo of Pojoaque retains the right to deny any and all land assignments, sales, leases, or transfers of interest in the economic development project until adequate assurances are made that the transferee, assignee, or lessee is a qualifying entity and that the terms of agreement will be satisfied by the transferee, assignee, or lessee. At its discretion, the Pueblo of Pojoaque may choose to deny said assignment, lease, or transfer or may negotiate a new agreement with the new operator or the Pueblo of Pojoaque may reclaim the facility and enter into an agreement with the qualifying entity.

4. Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of ten (10) years from

the date the Ordinance is adopted and the governing body passes the project participation agreement.

(i) Project Participation Agreement.

1. The qualifying entity shall prepare with the Pueblo of Pojoaque a project participation agreement. This agreement is the formal document that states the contribution and obligation of all parties in the economic development project. The agreement must state the following items:

A. The economic development goals of the project;

B. The contribution of the town and the qualifying entity;

C. The specific measurable objectives upon which the performance review will be read;

D. A schedule for project development and goal attainment;

E. The security being offered for the town's investment;

F. The procedures by which a project may be terminated and the Pueblo's investment recovered; and

G. The time period for which the Pueblo shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the Pueblo of Pojoaque shall relinquish interest in and oversight of the project.

2. Each project participation agreement shall be subject to review and approval by the governing body at a public hearing.

(j) Project Monies. All project moneys shall be kept in a separate account by the entity and the Pueblo of Pojoaque, with such account clearly identified. These accounts shall be subject to an annual independent audit.

(k) Termination. The governing body may terminate this Ordinance and the Pueblo of Pojoaque economic development plan and any or all project participation agreements undertaken under its authority. Termination shall be by Ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an Ordinance or project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of the Ordinance or any project participation agreement, any Pueblo monies remaining in the Pueblo project accounts shall be transferred to the Pueblo of Pojoaque general fund.

(l) Joint Regional Projects. The Pueblo of Pojoaque may engage in economic development projects involving one or more other government entities for projects that encompass more

than one municipality or county. In such instances, the relevant governing bodies shall adopt a joint powers agreement. This agreement will establish the application criteria and the terms of a joint powers agreement shall be consistent with the provisions of this Ordinance.

R-6 Commercial Cannabis Activity Code

(a) Definitions.

Unless a different meaning is clearly indicated here, the terms used herein shall have the same meaning as provided in the Cannabis Compact, as defined below. Nothing here grants the State authority beyond what it possesses under the Cannabis Compact or applicable laws.

1. "Applicant" means a person or entity applying for a Cannabis license from the Pueblo or the Department, and where applicable shall include officers, directors, and managers of any entity applying for a Cannabis license.

2. "Cannabis" has the same meaning as set forth in NMSA 1978, § 26-2C-2(B) (2021), and any amendments thereto.

3. "Cannabis Activity" or "Cannabis Activities" means the cultivation, production, processing, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, serving, purchase for resale, sale, or consignment of Cannabis Products, including medical Cannabis.

4. "Cannabis Establishment(s)" has the same meaning as set forth in NMSA 1978, § 26-2C-2(E) (2021), and any amendments thereto.

5. "Cannabis Product" has the same meaning as set forth in NMSA 1978, § 26-2C-2(K) (2021), and any amendments thereto.

6. "Cannabis Regulation Act" means NMSA 1978, §§ 26-2C-1 to -42 (2021), and any amendments thereto.

7. "Cannabis Compact" means the Intergovernmental Agreement between the Department and the Pueblo, as it may be amended.

8. "Controlling Person" has the same meaning as set forth in NMSA 1978, § 26-2C-2(U) (2021) and any amendments thereto.

9. "Department" means the New Mexico Regulation and Licensing Department, the Cannabis Control Division, the Superintendent of the New Mexico Regulation and Licensing Department, or any employee of the Department or the Cannabis Control Division exercising authority lawfully delegated to that employee by the Superintendent.

10. “Essential Government Services” means services provided by the Pueblo including, but not limited to, administration, public facilities, fire, police, health, education, elder care, social services, sewer, water, environmental and land use, transportation, utility services, community development, and economic development.

11. “Governor” means the Governor of the Pueblo or their designee.

12. “Lynn and Erin Compassionate Use Act” means NMSA 1978, §§ 26-2B-1 to -10 (2019), and any amendments thereto.

13. “Non-Pueblo Enterprise” means an entity, person, natural person, or combination of persons such as a partnership, corporation, limited liability company, or other combination that is not a Pueblo Enterprise.

14. “PPCC” means the Pueblo of Pojoaque Cannabis Commission.

15. “Processor” means any Cannabis processor licensed to process, package, and label useable Cannabis for sale at wholesale to Processors and Retailers by the Department or any Cannabis processor in Indian Country licensed or otherwise allowed by the Pueblo or another tribe.

16. “Producer” means any Cannabis producer licensed to produce and sell Cannabis at wholesale to Processors and other Producers by the Department or any Cannabis producer in Indian Country licensed or otherwise allowed by the Pueblo or another tribe.

17. “Pueblo” means the Pueblo of Pojoaque.

18. “Pueblo Enterprise” means any business or enterprise operated by the Pueblo or any entity created under Pueblo, federal, or State law that is wholly or majority owned by the Pueblo or a Pueblo Member, and any minority owners thereof.

19. “Pueblo’s Indian Country” means all lands within the exterior boundaries of the Pueblo’s Land Grant as confirmed by the United States and all lands held in trust or restricted fee status by the United States for the Pueblo or its citizens.

20. “Qualified Patient” has the same definition as set for in NMSA 1978, § 26-2C-2(PP) (2021), and any amendments thereto.

21. “Reciprocal Participant” has the same definition as set forth in NMSA 1978, § 26-2C-2 (QQ) (2021), and any amendments thereto.

22. “Retailer” means any Cannabis Retailer licensed to sell Cannabis in a retail outlet by the Department pursuant to the Cannabis Regulation Act or any Cannabis retailer in Indian Country licensed or otherwise allowed by the Pueblo or another tribe.

23. “State” means the State of New Mexico.

24. “State Cannabis Laws” means the laws, regulations, and rules that are validly and duly enacted by the Department relating to Cannabis, including but not limited to the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act, and the rules and regulations issued by the Department pursuant to those acts and the State Rules Act.

25. “State License” means a license issued by the Department, or any other regulations thereunder, to act as a cannabis manufacturer, producer, producer microbusiness, or retailer.

26. “State Tax” means the Cannabis excise tax as provided for in Section 45 of the Cannabis Regulation Act, codified at NMSA 1978, §§ 7-42-1 to -5 (2021), and any amendments thereto.

27. “Testing Lab” means any business that conducts testing of Cannabis Products for quality control, potency, and safety compliance for medical and other uses.

28. “Tribal Code” means the Pueblo Pojoaque Law and Order Code.

29. “Tribal Police” means the Pueblo’s police department or another entity with which the Pueblo contracts for statutory and regulatory compliance of Cannabis.

30. “Tribal Tax” means a tax imposed by the Pueblo on Cannabis, Cannabis Products, or commercial Cannabis Activities.

(b) Findings.

History. Historically, the cultivation, possession, delivery, distribution, and sale of Cannabis have been illegal across the United States, including in Indian Country, generally. Among other things, criminalization of Cannabis has disproportionately harmed historically underrepresented communities and individuals, including tribal communities and American Indians.

A. State Regulation. During the 2021 New Mexico Special Legislative Session, the New Mexico Legislature passed and Governor Michelle Lujan Grisham signed the Cannabis Regulation Act, House Bill 2, which took effect on June 29, 2021. The Act is now largely codified at New Mexico Statutes Annotated Sections 26-2.C-1 through 42. The Act sets forth a tightly regulated, State-licensed system allowing for the cultivation, processing, and commercial sale of Cannabis, Cannabis concentrates, useable Cannabis, and Cannabis-infused products for adults 21 years of age or older.

B. Pueblo Regulation. In moving Cannabis from criminal prohibitions to a civil regulatory framework, the State no longer has jurisdiction over Cannabis Activities within the Pueblo’s Indian Country. At the same time, if the Pueblo were to continue to criminalize Cannabis, the Pueblo would have a disparity between Pueblo citizens and non-citizens, with little if any assistance from the State for criminal prosecution of non-citizens. In consideration of this jurisdictional gap, and after serious deliberation, the Pueblo, as a sovereign nation, has

determined that a continuing complete ban on Cannabis within the Pueblo's Indian Country would be ineffective and unrealistic and its sale and possession should be regulated in certain circumstances, as set out in this code. At the same time, the need still exists for strict regulation and control over Cannabis Activities in Indian Country.

C. Cannabis Enforcement Priorities. The Pueblo adopts this Code to provide a robust regulatory program, advance the collaborative approach pursued in the Cannabis Compact, and protect the following Cannabis Enforcement Priorities:

1. prevent distribution of Cannabis to minors;

2. prevent revenue from the sale of Cannabis from going to criminal enterprises, gangs, and cartels;

3. prevent diversion of Cannabis from states where it is legal under state law in some form to other states.

4. prevent State-authorized Cannabis Activities from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

5. prevent violence and the use of firearms in the cultivation and distribution of Cannabis;

6. prevent drugged driving and the exacerbation of other adverse public health consequences associated with Cannabis use;

7. prevent the growing of Cannabis on public lands and the attendant public safety and environmental dangers posed by Cannabis Production on public lands; and

8. prevent Cannabis possession or use on federal property other than the Pueblo's Indian Country.

(c) Authorization and Licensing

a. General Prohibition. No one may engage in commercial Cannabis Activities within the Pueblo's Indian Country except as authorized in this Code.

B. Limited Authorization.

1. Governor Authorization. The Governor may authorize a person or entity to engage in commercial Cannabis Activities within the Pueblo's Indian Country when the Governor determines in their sole discretion that such authorization is in the best interests of the Pueblo and comports with the Cannabis Enforcement Priorities.

2. Pueblo Cannabis Activities. A Pueblo Enterprise authorized to conduct commercial Cannabis Activities on behalf of the Pueblo does not need a license under this Code but

the Pueblo may revoke such Pueblo Enterprise's authorization if it fails to meet its obligations under this Code and the Cannabis Compact.

C. Licensing. Before commencing Cannabis Activities within the Pueblo's Indian Country, any person or entity other than a Pueblo Enterprise owned or controlled by and acting on behalf of the Pueblo shall apply for and obtain a license from the PPCC in accordance with a license application process, requirements, fees, and timeframes that shall be prescribed by the PPCC.

D. Additional Requirements.

1. Background Checks. Any employee, manager, or person with an ownership interest in a Cannabis Establishment must undergo a background check before employment, management, or authorization to participate in Cannabis Activities under this Code. No person or entity may participate in Cannabis Activities as an employee, manager, or owner if the background check reveals a conviction that is substantially related to the qualifications, functions, or duties of person or entity, unless the PPCC determines that: (1) the Applicant is otherwise qualified, and (2) that issuing a license to the Applicant would not compromise public health or safety.

2. Gaming-Related Prohibitions. A Cannabis Establishment authorized or licensed under this Code shall not: (a) comingle its assets with the Pueblo or any gaming facility operating under a tribal-state gaming compact; (b) conduct any Cannabis Activities at any gaming facility operating under a tribal-state gaming compact; and (c) use profits generated from Cannabis Activity to develop or fund any gaming facility operating under a tribal-state gaming compact.

(d) Buffer Restrictions

A. Prohibition. No commercial Cannabis Activity except for home delivery may occur within 300 feet of the perimeter of the grounds of any school, childcare center, or daycare center, regardless of whether such facilities are located within or outside of the Pueblo's Indian Country.

B. Consideration. In deciding whether to authorize or license Cannabis Activity, the Governor and the PPCC will consider whether the proposed location is within 1,000 feet of the perimeter of the grounds of any of the following facilities, regardless of whether they are located within or outside of the Pueblo's Indian Country:

1. a school, childcare center, or daycare center;

2. a publicly owned or operated library, park, playground, or transit center;

3. a community recreation center or facility; or

4. a game arcade where admission is not restricted to persons age 21 or older.

C. Measurement. For purposes of this Section, the distance shall be measured as the shortest straight-line distance from the property line of the proposed location for the commercial Cannabis Activity to the property line of the facilities listed above.

(e) Safety and Security.

Cannabis Establishments that are authorized and licensed, as applicable, under this Code shall comply with requirements under the Cannabis Compact, this Code, PPCC regulations, and the Cannabis Establishment's policies and procedures (collectively, "Applicable Cannabis Requirements") regarding the following:

A. Alarm Systems. A security alarm system shall be maintained on all perimeter entry points and perimeter windows.

B. Cameras and Surveillance. Cameras and a surveillance system must cover the entire premises, including all points of ingress and egress and retain information per Applicable Cannabis Requirements.

C. Employee Identification.

1. All employees on the premises or engaged in the transportation of Cannabis Products shall have and display an identification badge, including name and photograph.

2. All nonemployee visitors, other than retail store customers, shall have and properly display an identification badge at all times while on the premises.

3. A log must be kept and maintained showing the full name of each noncustomer visitor entering the premises, , the time of arrival, time of departure, and the purpose of the visit.

D. Transport. All transportation of product to or from a State Licensee shall comply with State Cannabis Laws.

(f) Advertising and Signage.

A. Advertising Restrictions. Cannabis advertisements within the Pueblo's Indian Country may not contain any statement or illustration that:

1. is false or misleading;

2. promotes overconsumption; or

3. is designed in any manner that would be especially appealing to children or persons under 21 years of age.

B. Buffer. No Cannabis signage or advertising within the Pueblo's Indian Country may violate the buffer requirements of this Code.

(g) Retail Sales

Cannabis Establishment Retailers that are authorized and licensed, as applicable, under this Code may sell Cannabis Products at retail subject to Applicable Cannabis Requirements regarding the following:

A. Building Safety. A retail Cannabis Establishment shall meet the health, safety, and construction standards of 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, as applicable.

B. Hours. Hours for operation or sales at a retail Cannabis Establishment shall be set by the manager thereof.

C. No Minors. No person under the age of 21 years may enter the retail Cannabis Establishment or purchase any Cannabis Product, except that a confirmed Qualified Patient or a Reciprocal Participant who is at least 18 years of age may enter the retail store and purchase Cannabis Products for personal medical use.

D. Identification. Only unexpired identification of the following forms are acceptable to verify a person's age to purchase Cannabis:

1. Driver's license, instruction permit, or identification card of any state, province of Canada, United States territory, or the District of Columbia;

2. United States armed forces identification card issued to active duty, reserve, or retired personnel, or their dependents, which may include an embedded, digital signature in lieu of a visible signature;

3. Passport issued by a national government;

4. Merchant Marine identification card issued by the United States Coast Guard; or

5. Enrollment card issued by the governing authority of a federally recognized Indian tribe located in New Mexico.

E. Transaction Limits. A single retail customer transaction is limited to two ounces of useable Cannabis, sixteen grams of Cannabis extract, seven grams of Cannabis-infused extract or Cannabis concentrate for inhalation, or eight hundred milligrams of edible Cannabis.

F. Postings. The retail Cannabis Establishment shall post notices and warnings per Applicable Cannabis Requirements.

G. Samples. No free samples of Cannabis Products may be provided to customers. Samples may be provided to employees as allowed per Applicable Cannabis Requirements.
H. Intoxicated Persons. No Cannabis Products may be sold to persons who appear to be intoxicated.

I. Consumption. No Cannabis Products may be consumed on the retail premises, unless the Governor approves and the PPCC licenses, as applicable, a consumption premises.
J. Storage and Inventory. All Cannabis Products must be stored in such a way to protect from theft.

K. Waste Disposal. All unsold products will be returned to the entity from which they were purchased or disposed of as required or allowed per Applicable Cannabis Requirements.

L. Tracking/Traceability. All Cannabis Products delivered from an entity licensed by the State will be input into the State's tracking system within 24 hours of receipt, unless not technically possible or the PPCC provides otherwise for emergency circumstances. All Cannabis Products purchased from another tribe, tribal enterprise, or tribal citizen will be recorded in either the Pueblo's or the State's tracking system within 24 hours of delivery.

(h) Production and Processing

Cannabis Establishment Producers that are authorized and licensed, as applicable, under this Code may procure from another Producer or Processor or produce, harvest, trim, dry, cure, process, package, or label Cannabis to be provided for sale at Cannabis Establishment Retailer, to be sold to another tribe, or to be sold to a State Licensee in accordance with its license type, all subject to Applicable Cannabis Requirements regarding the following:

A. Safety and Security. Any Cannabis produced or processed must be produced and processed in a safe and secure manner and meet all quality assurance testing under Applicable Cannabis Requirements. Cannabis Products must also be packaged and labeled in such a way as to not be especially appealing to children, and must be packaged in child-proof packaging. Any Cannabis to be sold to a State Licensee also shall comply with State Cannabis Laws regarding quality assurance testing, packaging, and labeling.

B. Minors. No person under the age of 21 years may be present at any production or processing facility.

C. Samples. No Cannabis samples may be received from any Producer or Processor or given to another Producer, Processor, Retailer, or employee except as allowed under Applicable Cannabis Requirements. Samples provided to a State licensee must also comply with all State Cannabis Laws regarding sampling.

D. Storage and Inventory. All Cannabis will be stored in a way to minimize theft pursuant to Applicable Cannabis Requirements.

E. Waste Disposal. All waste must be disposed of in a way that renders the Cannabis unusable in accordance with Applicable Cannabis Requirements.

F. Traceability. Any transaction with a State Licensee will be executed through the State traceability system following the rules for State Licensees. All Cannabis Products sold to any State licensee will be fully traceable in the State's traceability system, tracing back to the plant(s) they were derived from and including results for all required quality assurance testing. All required test results must be entered into the State's traceability system by a Department-certified or State licensed testing laboratory.

(i) Taxes

A. Tax. The Tribal Council may impose a Tribal Tax equal to up to 100% of the State Tax that is in effect, at any given time. The Pueblo will use the proceeds of such tax for Essential Government Services. The Tribal Tax shall be remitted to the Pueblo on a quarterly basis.

B. Exemptions. The Tribal Tax may include exemptions for the following:

1. sales to the Pueblo, Pueblo Enterprises, Pueblo Members, a member of another federally recognized Indian tribe, or a federally recognized Indian tribe;

2. sales of Cannabis grown, produced, or processed within the Pueblo's Indian Country; or

3. sales or activities that would otherwise be exempt from State tax under State or federal law.

C. Records. Appropriate records shall be maintained to verify proper application of the Tribal Tax.

(j) Compliance and Enforcement

A. Generally. The PPCC may conduct premises and compliance checks of any commercial Cannabis Activity to observe compliance with the Cannabis Compact, this Code, PPCC regulations, or the Cannabis Establishment's policies and procedures, and to provide support and education to ensure that any problems are corrected. Any serious or ongoing non-compliance issues that arise will be reported to the Governor.

B. Use of Minors. Notwithstanding the prohibition regarding minors in this Code, the PPCC may use minors 18, 19, or 20 years of age to conduct any minor compliance checks. No criminal action may be taken against any minor who purchases Cannabis as part of such a compliance check.

(k) Indemnification

The Pueblo indemnifies any official of the Pueblo or any owner, manager, or employee of a Pueblo Enterprise made party to any proceeding because of their role in commercial Cannabis Activity against personal liability incurred in a proceeding if the individual:

1. acted in their official capacity;

2. acted in good faith;

3. believed their conduct was in the best interest of the Pueblo; and

4. acted in accordance with this Code, the Cannabis Compact, PPCC regulations, and the Pueblo Enterprise's policies and procedures.

B. For purposes of this Section:

5. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative related to commercial Cannabis activity; and

6. "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, or reasonable expenses, including legal expenses, incurred with respect to a proceeding.

(l) Sovereign Immunity and Jurisdiction Preserved.

Nothing in this Code waives the sovereign immunity of the Pueblo, the Tribal Council, or any committee, entity, or corporation acting under the authority of the Pueblo or the Tribal Council. Nothing in this Code grants jurisdiction to the United States or to a State, local, or other tribal government.

Subpart S Employment Law & Labor Relations

S-1 Drug and Alcohol Testing Policy for Employees of the Pueblo of Pojoaque Tribal Government

The Pueblo of Pojoaque wishes to protect the health, safety and welfare of the Pueblo's members, employees, and visitors by ensuring a drug-free workplace.

(a) Pre-Employment Drug Testing for Employees. All applicants shall be required to submit to a Breathalyzer and pre-employment drug screening after an offer of employment has been made. The drug screening shall be scheduled at the earliest possible date after an offer of employment is made and an applicant may not begin work until after successfully passing the pre-employment drug screening.

(b) Drug Testing when there is Reasonable Suspicion of Impairment. All employees are subject to drug testing any time there is reasonable suspicion that they are impaired at work based upon objective observations of the employee and their behavior. Directors shall follow the "Impairment Protocol" using the observed behaviors checklist. A reasonable suspicion of drug use may be based upon a number of factors including, but not limited to, the odor of drugs upon the employee's person, bloodshot eyes, slurred speech, erratic behavior, failure by the employee to follow established safety precautions, or the possession of drugs by the employee at their assigned work station.

Under no circumstances will the employee be allowed to drive themselves to the testing location.

(c) Mandatory Testing for on Duty Accidents. Any employee involved in an on-duty accident, including all traffic accidents during work-related driving, must immediately submit to a mandatory drug test. Failure to participate in post-accident drug testing may result in suspension or termination. The Safety Department shall be notified immediately to report the accident and for instructions on where to be tested.

The investigation and subsequent testing shall take place within two (2) hours following the incident. Under no circumstances will the employee be allowed to drive to the testing location.

(d) Required Components for Drug Testing. Any drug testing or retesting procedure shall include all of the following:

1. Initial testing will screen for at least these substances using a certified laboratory instant testing: on, but not limited to, the following substances:

    A. Amphetamines and Methamphetamines

    B. Cocaine

C. Marijuana/Tetrahydrocannabinol (THC)

D. Opiates/opioids

E. Phencyclidine (PCP)

F. Alcohol

G. Benzodiazepines

2. Chain of custody provisions will be followed to ensure that a valid specimen is acquired, the donor is properly identified, and that no tampering or mishandling of the specimen occurs from initial collection to final disposition. Specimen handlers shall be certified through the laboratory that tests the specimens.

3. Results are to be provided in writing to Subject:

A. If the screening test result is negative, the test is concluded and the Subject has passed the drug test.

B. If the screening test is positive and the employee does not contest the result and the opinion is that the positive test results are not because of prescribed or over the counter medication or for any other medically acceptable reasons, the Subject has failed the drug test.

C. If the screening test is positive and the employee contests the result, the employee may opt to have the specimen sent to a certified laboratory for confirmation testing. The laboratory must meet standards that are the same as those used by the Department of Health and Human Services (DHHS) National Institute on Drug Abuse (NIDA) to certify laboratories engaged in urine drug testing for Federal agencies. A $50 fee is required for this service.

i. If the confirmation testing result is negative, the test is concluded and the subject has passed the drug test. The $50 fee will be refunded if the confirmation test is negative.

ii. If both the screening test and the confirmatory test results are positive and the opinion is that the positive test results are not because of prescribed or over the counter medication or for any other medically acceptable reasons, the Subject has failed the drug test.

4. All drug test results shall be kept under lock and key and only accessible to authorized employees of the Pojoaque Pueblo gaming Commission. Test results to be shared with the Human Resources Director as needed.

(e) Alteration/Tampering. Any alteration of or tampering with a sample/specimen, or drug kit provided in accordance with this policy will result in a denial of any offer of employment to the applicant. Any current employee who alters or tampers with a drug sample, specimen or drug kit will be asked to take a second test at the expense of the employee, to be administered within one hour of the 1st test. The employee will not be permitted to leave the premises and will be monitored between tests. Failure to take the 2nd test, or tamper with a 2nd test, shall be considered a failed drug test.

(f) Consequences for Applicants of Failing or Refusing to Take a Drug Test or Breathalyzer. Applications for a job who fail or refuse the pre-employment drug test shall be ineligible for employment for a period of three months.

(g) Employee Seeking Assistance. Current employees with a drug abuse problem may seek assistance from the Human Resources Department. The Pueblo of Pojoaque is not financially responsible for employee treatment, however, the employee maybe required to complete the Path to Wellness or other substance abuse program as a condition of employment.

(h) Penalties for Failure of Employees to Pass Drug Test. If there is reasonable suspicion that an employee is using a controlled substance or is using alcohol to the extent that job performance may be impaired, the employee may be tested for drug use and the following penalties will apply if the employee fails the test. For the purpose of this section, refusal to submit to a test shall be considered the same as a failed test.

1. Any employee failing a drug test may lose Worker Compensation benefits.

2. If the first drug test is positive, the employee may request a second test, at their own expense, to ensure the validity and reliability of the first test. The second drug test shall be requested and taken within an hour of receiving the result of the first drug test. A failed test for alcohol will be retested ten (10) minutes after the first test. During this time, the employee will not be permitted to leave the premises, until the second test is performed, and the employee has been released by the Testing Representative.

3. If the employee tests positive for drug or alcohol use, they shall be subject to the penalties described below.

   A. First Offense Penalties are mandatory. First Offense Penalties include up to one-week leave without pay. Leave without pay shall continue until employee tests negative for drug use. Upon returning to work, the employee shall be placed on three month probation during which time they may be subject to drug testing. The employee shall be responsible for the cost of all drug testing during the probationary period. A maximum of three tests to be conducted. These penalties don't include testing requirements of the Path to Wellness program.

   B. Second Offense Penalties are mandatory. After a second offense, employment is terminated. Employee cannot reapply for a position for a period of three months.

4. DUI convictions: During the employment relationship, employees must report any arrest within 72 hours of the arrest. Failure to report the arrest on a timely basis may be grounds for termination. The Pueblo reserves the right to request further information regarding the arrest and to suspend the employee pending further information. At the discretion of the Department Supervisor or Tribal Official, any employee convicted in any Court of Driving under the Influence may be subject to the First and Second Offense Penalties.

5. A person covered by this policy who refuses to take a drug test when required shall be considered to have failed the drug test.

6. Procedure: Upon receiving notification that the employee has tested positive for drugs, the Human Resources Director shall be notified. HR may notify the Department Director. The Gaming Commission shall notify the employee of a positive test, with a follow-up from the Human Resources Department for imposing of the appropriate penalties.

(i) Confidentiality. Information and records relating to test results, drug dependency as well as legitimate medical explanations for positive test results provided by an applicant or employee in compliance with this policy will be kept confidential to the extent required by law and maintained in secure files separate from normal personnel files. Such records and information may be disclosed to an employee's managers and supervisors when necessary and may also be disclosed when relevant to a grievance, charge, claim, or other proceeding initiated by or on behalf of an employee or applicant.

S-2 Drug-Free Workplace Act

(a) The Pueblo of Pojoaque does not differentiate between drug users and drug pushers or sellers. Any employee who gives or in any way transfers a controlled substance to another person or sells or manufactures a controlled substance will be subject to discipline up to and including dismissal.

(b) The term controlled substance means any drug considered unlawful according to federal regulations.

(c) An employee is required by law to inform his or her immediate supervisor or the Governor within five (5) days after he or she is convicted for violation of any federal or state criminal drug statute at the workplace.

(d) The personnel officer of any agency receiving federal funds must notify the U.S. Government agency with which the contract was made within ten (10) days after receiving notice from the employee or otherwise receiving actual notice of the conviction.

(e) If an employee is convicted of violating any criminal drug statute while in the workplace, he or she will be subject to discipline as determined by the Pueblo of Pojoaque Tribal Council. The Tribal Council shall determine the extent of discipline up to and including dismissal.

Alternatively, the Tribal Council may require the employee to undergo treatment at an approved private or governmental institution.

(f) Employees will receive notification of all programs and services available to the Pueblo of Pojoaque by the Eight Northern Indian Pueblos Substance Abuse Prevention Program.

(g) Employees will be required to sign a certification form stating compliance with the Pueblo of Pojoaque's policy statement regarding the Drug-Free Workplace. This requirement is included in the orientation checklist to be completed by each new employee.

(h) As a condition of further employment on a federal government contract, the law requires all employees to abide by this policy.

S-3 Labor Organization Ordinance

(a) Definitions. For purposes of this Ordinance:

1. "Business agent" means any person who acts or attempts to act for, or on behalf of, any labor organization in:

   A. The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; or

   B. Soliciting or receiving from any employer any right or privilege for employees.

2. "Employer" means any person, firm, association, corporation and other business entity lawfully operating on the Pueblo lands, including the Pueblo and its instrumentalities, enterprises, corporations or other subordinate economic organizations owned by the Pueblo.

3. "Labor organization" means any organization of any kind or any agency or employee representation committee or plan in which employees organize for the purpose, in whole or in part, of dealing with an employer concerning hours of employment, rate of pay, wages, working conditions, or grievances of any kind relating to employment and desiring to operate on the Pueblo lands.

4. "Ordinance" means the Pueblo of Pojoaque Labor Organization Ordinance.

5. "Person" means any individual, employer, labor organization, corporation, association, company, firm, partnership or other entity.

6. "Pueblo" means the Pueblo of Pojoaque, a federally-recognized Indian tribe.

7. "Pueblo lands" means the lands anywhere within the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the Court of Private Land Claims to a Pueblo Indian Tribe of New Mexico; or lands held in trust by the federal government for the benefit of the Pueblo or any other lands subject to the jurisdiction of the Pueblo.

8. "Governor" means the Governor of the Pueblo or his designee.

9. "Tribal Council" means the governing body of the Pueblo.

10. "Tribal Court" means the Pueblo of Pojoaque Tribal Court.

11. "Tribal Criminal Offense" means any action that violates Subpart M (Criminal Code) of the Pueblo of Pojoaque Law and Order Code, any applicable public policies, memorandums and resolutions regarding the Law and Order Code, as previously enacted. Such offenses include, but are not limited to, assault, battery, theft, bribery, conspiracy, negligence, disorderly conduct, extortion, misusing property, malicious mischief and trespass.

12. "Corporate Team Member" is defined as a Team Member who works for one of the Corporate Employers owned by the Pueblo of Pojoaque and its instrumentalities as provided under *Section III A of the Corporate Team Handbook*.

13. "Corporate Employer" is defined as a corporation owned by the Pueblo. The Pueblo, in its governmental capacity, charters for-profit corporations. The corporations chartered by the Pueblo are also owned by the Pueblo and are referred to in the Corporate Team Member Handbook as "Corporate Employers." The Corporate Employers include, but are not limited to:

- Buffalo Thunder Inc. (BTI)
- Pojoaque Gaming Inc.(PGI)
- Pueblo of Pojoaque Enterprise Corporation (PPEC)
- Pueblo of Pojoaque Commercial Development Corporation (PPCDC)
- Pueblo of Pojoaque Development Corporation (PPDC)

(b) As provided under *Section III B. of the Corporate Team Handbook*,

1. Tribal Council Findings. The Tribal Council finds that The Pueblo possesses the inherent power to exclude persons from Pueblo lands which includes the lesser power to place conditions on entry, on continued presence, or on conduct on Pueblo lands;

2. Various labor organizations and their business agents may attempt to enter Pueblo lands without the authorization of the Pueblo through their connection with employers who have lawfully entered Pueblo lands pursuant to leases, rights-of-ways and other consensual relationships with the Pueblo;

3. The unauthorized entry of various entities and persons on Pueblo lands threatens the political integrity, economic security and the health, safety and welfare of the Pueblo and its members and visitors in the overall direction and policy for the economic development of the Pueblo;

4. The individual freedom of choice in the pursuit of employment on Pueblo lands should be encouraged as a matter of the public policy and law of the Pueblo; and

5. The right to work should not be subject to undue restraint, coercion, or infringed upon based on membership in, affiliation with, or financial support of a labor organization, or upon the refusal to join, affiliate with, or financially or otherwise support a labor organization.

(c) Jurisdiction. All persons who enter Pueblo lands shall be deemed to have given implied consent to the jurisdiction of the Pueblo and shall be subject to the provisions of this Ordinance.

(d) Registration of Labor Organizations.

1. Every labor organization operating on Pueblo lands shall file a report with the Governor, within sixty (60) calendar days after this Ordinance is enacted by the Tribal Council and/or at least sixty (60) calendar days prior to any activity on Pueblo lands or prior to activity related to employees or workers performing work or services on Pueblo lands and thereafter on or before December 31 of each year. The report, which shall be filed by the president or the business agent of the labor organization, shall contain the following information:

A. The name and address of the labor organization.

B. The names and addresses of the president, secretary, treasurer, and business agent of the labor organization.

C. The name and address of the national or international organization, if any, with which it is affiliated.

D. A copy of the collective bargaining agreement between the labor organization and an employer, if any.

2. At the time of filing the report, the labor organization shall pay an annual fee of twenty-five dollars ($25.00).

3. The president or the business agent of the labor organization shall file with the Governor a notice of changes to the information required by this Section within ten (10) days after the changes are made, and provide any additional information requested by the Governor.

(e) Business Agent.

1. All licenses shall be non-transferable or non-assignable.

2. Any person desiring to act as a business agent on Pueblo lands shall first obtain a license from the Pueblo by: (i) filing an application under oath with the Governor; (ii) paying a license fee of twenty five dollars ($25.00); (iii) submitting a full set of fingerprints of the applicant, which shall be taken by the Pueblo of Pojoaque Tribal Police Department or other law enforcement agency authorized by the Tribal Council to do so; and (iv) submitting a statement signed by the president and the secretary of the labor organization showing his authority to act as a business agent for the labor organization.

3. The Governor, in his discretion, may conduct or cause to be conducted an independent background investigation of the applicant to determine the applicant's eligibility for a license.

4. Upon compliance with Paragraph (d), the Governor shall issue the license. If at any time after the issuance of the license the Governor receives reliable information based on the background investigation or other source that the licensee is ineligible to hold a license, the Governor may suspend or revoke the license, in which case the licensee may appeal the suspension or revocation within thirty (30) days to the Tribal Court. The license shall run for the calendar year for which is issued unless sooner surrendered, suspended, or revoked.

5. All licenses shall expire at midnight on December 31 of each year, but may be renewed by the Governor on a form prescribed by the Governor for that purpose and upon the payment of an annual renewal fee of twenty five dollars ($25.00); however, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in Paragraph (d) as a new applicant.

6. Grounds for denial, suspension, or revocation of licenses shall include false application.

7. The Pueblo reserves its right to deny a license to any organization, entity, or person that does not meet the license application requirements or that does not comport to the Pueblo's values and priorities as determined by the Pueblo's authority in its sole discretion. However, the Pueblo will not discriminate against an organization, entity, or person based on any federally-protected classification.

(f) Freedom of Choice Guaranteed.

1. No person shall be required, as a condition of employment or continuation of employment on Pueblo lands, or on lands owned by the Pueblo or any of its instrumentalities, corporations or entities or as an employee of the Pueblo or any of its instrumentalities, corporations or entities or political or economic subdivisions to: (i) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization; (ii) become or remain a member of a labor organization; (iii) pay dues, fees, assessments or other charges of any kind or amount to a labor organization; or (iv) pay to any charity or other third party, in lieu of such payments any

amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization.

2. Any actual agreement between any labor organization and an employer that violates the rights of employees guaranteed by the provisions of this Ordinance is declared to be against the public policy of the Pueblo and of no legal effect.

3. No person, including any labor organization, employer, or employee, shall commit any tribal offense or threaten, or act against, the health, safety and welfare of the Pueblo and its members and its visitors.

(g) Solicitation and Distribution Policy, Corporate Team Members, Corporations Owned by the Pueblo of Pojoaque, Corporate Team Member Handbook.

1. Corporate Team Members shall refrain from soliciting other Corporate Team Members during the working hours of either Corporate Team Member. Examples of solicitation include the selling or merchandising of property, seeking contributions or donations for any reason, or seeking signatures in support of any cause.

2. Corporate Team Members shall refrain at all times from distributing any literature in any work area.

3. Solicitation of Corporate Team Members or distribution of any literature by non-Corporate Team Members on Pueblo of Pojoaque premises and in work areas is forbidden. The Chief Executive Officer may waive the above under certain circumstances and may make appropriate amendments to the Corporate Team Member Handbook.

(h) Violations of the Ordinance. It shall be a violation of this Ordinance for any person on Pueblo lands:

1. To act as a business agent without having obtained a valid license.

2. To solicit membership for or to act as a business agent of any labor organization without authority of the labor organization to do so.

3. To make any false statement in an application for license.

4. To unlawfully seize or occupy any property during the existence of a labor dispute.

5. To coerce or intimidate any elected or appointed Tribal Official; or to intimidate the family, picket the domicile, or injure the person or property of any employee or Tribal Official.

6. To engage in picketing in any manner which constitutes a Tribal offense, including picketing in a manner to prevent ingress to and egress from any premises, and picketing other than in a reasonable and peaceful manner.

7. To violate the provisions under Paragraph (g).

(i) Penalties. Any person who, directly or indirectly, violates any provision of this Ordinance shall be subject to a fine not exceeding one thousand dollars ($1,000), or exclusion from Pueblo lands, or both.

(j) Civil Remedies. Any person injured as a result of any violation or threatened violation of the provisions of this Ordinance shall be entitled to injunctive relief from the Pueblo of Pojoaque Tribal Court against any person threatening any violation, and may, in addition, recover any and all damages, including costs and reasonable attorney fees, resulting from the violation or threatened violation. The remedy shall be independent of, and in addition to, any other penalties and remedies prescribed by applicable law.

(k) Severability. The provisions of this Ordinance are declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not affect the remaining provisions of this Ordinance. However, nothing in this Ordinance is intended nor shall be construed to violate the National Labor Relations Act to the extent, if any, as it applies to the Pueblos of New Mexico.

(l) Sovereign Immunity. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Pueblo or its agents, employees or officials, or any of the Pueblo's instrumentalities, corporations or entities or their respective officers, directors, employees or agents, nor intended to constitute consent to suit or consent to jurisdiction of any court, administrative agency, arbitrator or other tribunal.

(m) Exclusive Jurisdiction. The provisions of this Ordinance shall be under the sole jurisdiction of the Pueblo of Pojoaque Tribal Court.

S-4 Tribal Employment Rights Office Ordinance

(a) Declaration of Policy. As a guide to the interpretation and application of the Ordinance, the public policy of the Pueblo of Pojoaque is declared to be as follows: land, water, minerals, jobs, subcontracts and contracts in the private sector on or near the Pueblo of Pojoaque are an important resource for Indian people and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique and special employment, subcontract and contract rights, and the Pueblo of Pojoaque Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. An integral part of attaining this goal is by structuring employment and training opportunities on the Pueblo of Pojoaque to provide for the hiring of Indians who are qualified, and through training of Indians where there are sufficiently qualified Indians to meet employment opportunities. Indians are also entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination, and tribal governments can and should play a role in the enforcement of those laws. The Pueblo of Pojoaque believes it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and

businesses and to eradicate discrimination against Indians. Nothing contained in this Ordinance shall violate or undermine federal requirements on equal employment opportunity, namely Title VII of the 1964 Civil Rights Act; and the Office of Federal Contract Compliance Programs (OFCCP) or Executive Order 11246.

(b) Definitions.

1. "Employee" means any person employed for remuneration.

2. "Employer" means any person, partnership, corporation or other entity that employs, for wages, two (2) or more employees or any person who engages in employment or construction activities through paid agents or servants or who is hired on contracts for services within the exterior boundaries of the Pueblo of Pojoaque. The term employer includes any person acting as an agent, contractor, subcontractor of an employer, directly or indirectly, but shall not include the United States or any wholly owned government corporation or any state or political subdivision thereof; but shall include independent contractors and subcontractors of the United States or any wholly owned government corporation or any state or political subdivision thereof.

3. "Covered Employer" means any employer employing two or more employees who during any thirty-(30)-day period spend, cumulatively, forty (40) or more hours performing work within the exterior boundaries of the Pueblo of Pojoaque.

4. "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and as encompassing as possible to ensure the Ordinance's coverage overall employment and contract activities within the Pueblo's jurisdiction, and the term shall be so interpreted by the TERO Director and the courts.

5. "Commercial Enterprise" means any activity by the Pueblo of Pojoaque or of the federal or state governments that is not a traditional government function as defined by the Internal Revenue Service.

6. "Indian" means any member of a federally recognized tribe.

7. "Indian-Owned Firm or Entity" means any commercial, industrial, or other business activity owned firm or entity, provided that such Indian ownership constitutes not less than fifty-one percent (51%) of the enterprise.

8. "Indian Preference" means that Indians, without regard to tribal affiliation, are given preference over non-resident Indians in employment and training, and that Indians are given preference over non-Indians in employment and training.

9. "TERO Director" is the person appointed by the Tribal Council to administer the TERO Program.

10. “Local Indian” means any member of a federally recognized tribe who resides within the exterior boundaries of the Pueblo of Pojoaque.

11. “Person” shall include both natural and artificial persons including, but not limited to, corporations, trusts, partnerships, unions, agents, societies, sole proprietorships, and estates of decedents.

(c) Employer Reporting Information and Requirements. Every employer is subject to the Pueblo of Pojoaque TERO requirements. All employers shall report to the Pueblo of Pojoaque TERO Director and register his or her business activity. Every employer shall report: the nature of his or her business activity; the number of employees at various stages of the contract/subcontract; total amount of contracts; and provide supporting documents as required for business activity conducted within the exterior boundaries of the Pueblo of Pojoaque.

(d) Indian Preference in Employment. All covered employers, for all employment occurring within the exterior boundaries of the Pueblo of Pojoaque, shall give preference to qualified Indians, with the first preference to local Indians, in all hiring, promotion, training, and all other aspects of employment. Such employers shall comply with the rules, regulations, guidelines and orders of the TERO Director, which set forth the specific obligations of employers in regard to Indian preference and local Indian preference. These requirements shall not apply to any direct employment by the Pueblo of Pojoaque or by the federal, state or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

(e) Indian Preference in Contracting. All entities awarding contracts or subcontracts for supplies, services, labor and materials in an amount of five thousand dollars ($5,000) or more where the majority of the work on the contract or subcontract will occur within the exterior boundaries of the Pueblo of Pojoaque, shall give preference in contracting and subcontracting to qualified entities that are certified by the TERO Director as fifty-one percent (51%) or more Indian owned and controlled, with a first preference to qualified entities that are fifty-one percent (51%) or more owned and controlled by local Indians. These requirements shall not apply to the award of contracts awarded directly by the Pueblo of Pojoaque Tribal Council or by the federal or state government or their subdivisions. They shall apply to any contracts awarded by any commercial enterprise of the Pueblo of Pojoaque; even if said contracts must be submitted to the Pueblo of Pojoaque Tribal Council for approval. Tribal programs or divisions other than commercial enterprises shall not be required to comply with these requirements but shall be required, when submitting a contract to the Pueblo of Pojoaque Tribal Council for approval, to indicate, as part of the submission to the TERO Director, the steps taken to award the contract to a local Indian contractor. These requirements shall apply to all subcontracts awarded by a tribal, federal or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines, and orders of the TERO Director, which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting. The TERO Director shall establish a system for certifying firms as Indian preference and local Indian preference eligible.

(f) Unions. Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement form such union(s) stating that the union shall comply with Indian preference laws, and with the rules, regulations and guidelines of the Pueblo of Pojoaque. Such agreement shall be subject to the approval of the TERO Director.

(g) Powers of the TERO Director. The TERO Director has the full power, jurisdiction, and authority to:

1. Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this Ordinance. Except when an emergency exists, the TERO Director shall provide the public with a reasonable time for comment before promulgating any final regulations.

2. Require each covered employer or entity to submit to the TERO Director an acceptable compliance plan indicating how it will comply with this Ordinance, before a covered employer or entity may commence work within the exterior boundaries of the Pueblo of Pojoaque.

3. Impose numerical hiring goals and timetables that specify the minimum number of Indians a covered employer must hire, by craft or skill level.

4. Require covered employers to establish or participate in such training programs as the TERO Director determines necessary in order to increase the pool of qualified Indians on the Pueblo of Pojoaque as quickly as possible.

5. Establish in conjunction with Tribal employment and training programs, a tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the tribal hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians.

6. Prohibit covered employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this requirement, the TERO Director shall adopt the EEOC guidelines on these matters to the extent that they are appropriate. The TERO Director shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians.

7. To enter into agreements with unions to ensure union compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.

8. Impose contract and subcontract preference requirements, with first preference requirements to local Indian firms, and establish and operate a system for certifying firms as eligible for Indian preference and local Indian preference.

(h) TERO Director; Staff; Duties. The TERO Director shall have all necessary power to: administer, implement, and enforce this Ordinance, including but not limited to:

1. Adopt, amend and rescind rules, regulations, or guidelines.

2. To subpoena records and witnesses.

3. Conduct investigations.

4. To conduct hearings or to impose sanctions pursuant to Subsection (n).

(i) Intergovernmental Relationships. The TERO Director is authorized to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians.

(j) Employment Rights Fee. An employment rights fee, to raise revenue for the operation of the TERO Office, is imposed as follows:

1. Every covered employer with a construction contract in the sum of one hundred thousand dollars ($100,000) or more shall pay a one-time fee of five percent (5%) of the total amount of the contract. The fee may be paid in installments over the length of the contract, if approved by the TERO Director.

2. Every covered employer, other than construction contractors, with twenty (20) or more employees working, within the exterior boundaries of the Pueblo of Pojoaque, with gross sales of one hundred thousand dollars ($100,000) or more shall pay a quarterly fee of one half of one percent (½ of 1%) of his employees' quarterly payroll which shall be paid within thirty days after the end of each quarter. This fee shall not apply to education, health, governmental, or nonprofit employers nor to utilities franchised by the Pueblo of Pojoaque.

3. The TERO Director shall be responsible for collecting said fees pursuant to any rules and regulations adopted. Said fees shall be paid to the Treasurer and shall be credited to the general account of the Pueblo.

(k) Complaints. Any individual, group of individuals or organization that believes any covered employer or entity has violated any requirements imposed by this Ordinance or regulations issued pursuant to it, may file a complaint with the TERO Director. The complaint shall be in writing and shall provide such information as is necessary to enable the TERO Director to carry out an investigation. The TERO Director shall investigate every complaint filed with him. If upon investigation, he has reason to believe a violation has occurred, he shall proceed pursuant to the provisions of Subsection (n). Within twenty (20) days after receipt of the complaint, and on a regular basis thereafter, the TERO Director shall provide the complaining party with a written report on the status of the complaint.

(l) Investigations. On his own initiative or pursuant to a complaint, the TERO Director or any field compliance officer designated by the TERO Director shall make such public or

private investigations within the boundaries of the Pueblo of Pojoaque as he or the TERO Director deems necessary to determine whether any covered employer or other covered entity has violated any provision of this Ordinance or any rule or order hereunder, or to aid in prescribing rules, regulations and guidelines hereunder. The TERO Director or his delegate may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations, and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of this Ordinance or any rule or order hereunder.

(m) Power to Require Testimony and Production of Records. For the purpose of investigations or hearings which, in the opinion of the TERO Director, are necessary and proper for the enforcement of this Ordinance, the TERO Director, or any field compliance officer designated by the TERO Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements or other documents, records or information which the TERO Director deems relevant or material to the inquiry.

(n) Enforcement.

1. When, after conducting an investigation, initiated by a complaint pursuant to Subsection (k) or a self-initiated investigation pursuant to Subsection (l), the TERO Director has reason to believe a violation of this Ordinance or regulations issued pursuant to it has occurred, the TERO Director shall notify the covered employer or entity in writing, specifying the alleged violations. However, he may withhold the name(s) of the complaining party if he has reason to believe that such party shall be subject to retaliation. The TERO Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his right to request a hearing.

2. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time, which in no event shall be less than five (5) days from the date of receipt of such notice, to comply, unless the TERO Director has reason to believe irreparable harm will occur during that period, in which case he may require that compliance occur within fewer than five (5) days. If the party fails or refuses to comply, he may request a hearing before the TERO Director which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the TERO Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the TERO Director to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the TERO Director may proceed pursuant to Subsection (n)(5).

3. If the party requests a hearing pursuant to Subsection (n)(2), and the TERO Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Pueblo prior to the hearing, he may, in his discretion, require the party to post a bond with the TERO Director in an amount

sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the TERO Director may proceed pursuant to Subsection (n)(5). The TERO Director may also petition the Pueblo of Pojoaque Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of all parties during the pendency of the complaint and hearing proceedings.

4. Any hearing held pursuant to Subsection (n)(2) shall be governed by the rules of practice and procedure which may be adopted by the TERO Director. The TERO Director shall not be bound by technical rules of evidence in the conduct of hearings under this Ordinance, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the TERO Director. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of the party charged.

5. If, after the hearing, the TERO Director determines that the violation alleged in Subsection (n)(1) occurred and that the party charged has no adequate defense in law or fact, if no hearing is requested, the TERO Director may:

A. Deny such party right to commence business within the exterior boundaries of the Pueblo of Pojoaque;

B. Suspend such party's operation within the exterior boundaries of the Pueblo of Pojoaque;

C. Terminate such party's operation within the exterior boundaries of the Pueblo of Pojoaque;

D. Deny the right of such party to conduct any further business within the exterior boundaries of the Pueblo of Pojoaque;

E. Impose a civil fine on such party in an amount not to exceed five thousand dollars ($5,000) for each violation;

F. Order such party to make payment of back pay to any aggrieved Indian;

G. Order such party to dismiss any employees hired in violation of the Pueblo of Pojoaque Employment Right requirements; or

H. Order the party to take such other action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by violation of this Ordinance, consistent with the requirements of 25 U.S.C. 1301, et seq.

6. The TERO Director's decision shall be in writing, shall be served on the charged party by registered mail or in person no later than thirty (30) days after the close of the hearing provided in Subsection (n)(5). Where the party's failure to comply immediately with the TERO Director's orders may cause irreparable harm, the TERO Director may move the

Tribal Court, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this Ordinance, pending the party's appeal or expiration of the time for appeal.

(o) Jurisdiction. The Pueblo of Pojoaque Tribal Council, the TERO Director and the Pueblo of Pojoaque Tribal Court have exclusive jurisdiction of all matters arising under the TERO Resolution and any related Ordinance, Rules, Regulations, Laws and Policies.

(p) Appeals.

1. An appeal to the Tribal Court may be taken from any final order of the TERO Director by any party adversely affected thereby. Said appeal must be filed no later than twenty (20) days after the party receives a copy of the TERO Director's decision. The Tribal Court shall uphold the decision of the TERO Director unless it is demonstrated that the decision of the TERO Director is arbitrary, capricious or in excess of the authority of the TERO Director. The appeal shall be taken by serving a written notice of appeal with the Tribal Court, with a copy to the TERO Director within twenty (20) days after the date of the entry of the order. The notice of appeal shall:

A. Set forth the order from which appeal is taken;

B. Specify the grounds upon which reversal or modification of order is sought; and

C. Be signed by the appellant.

2. The order of the TERO Director shall abate pending the determination of the Tribal Court. However, the TERO Director may petition an, for good cause shown, the Court may order the party requesting a hearing to post a bond sufficient to cover monetary damages that the TERO Director assessed against the party or to assure the party's compliance with other sanction or remedial actions imposed by the TERO Director's order if that order is upheld by the Court. If the order of the TERO Director is reversed or modified, the Court shall by its mandate specifically direct the TERO Director as to further action in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein. If the TERO Director's order is upheld on appeal, or if no appeal is sought within twenty (20) days from the date of the party's receipt of the TERO Director's order, the TERO Director shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the TERO Director and the sanctions imposed by it.

3. If at any stage in the enforcement process, the TERO Director as reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the TERO Director or the Court will not be able to collect monetary damages or TERO fees that are (a) owned by that party pursuant to any outstanding order of the TERO Director or Court, or (b) which may be owed if the charges set out in any outstanding notice of violations are upheld, the TERO Director may petition the Tribal Court pursuant to the rules of procedures of the Court to attach and hold sufficient property

of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the TERO Director and other affected parties.

(q) Confiscation and Sale. If, twenty-one (21) days after a decision by the TERO Director pursuant to Paragraph (o) no appeal has been filed, or thirty (30) days after a decision by the Court on an appeal from a decision by the TERO Director pursuant to Subsection (p)(1) a party has failed to pay monetary damages imposed on it or otherwise complied with an order of the TERO Director or the Court, the TERO Director may petition the Court to order the tribal police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary or to otherwise achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the TERO Director has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition valid, it shall order the tribal police to confiscate and hold said property or as much as is available. The tribal police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If thirty (30) days after confiscation the party has not come into compliance, the Court shall order the police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the TERO Director and all costs incurred by the Court and police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

Subpart T The Environment, Water and Natural Resources

T-1 Dumping and Trespassing

(a) Definitions.

1. "Garbage" includes all waste food, swill carrion, slops and all waste from the preparation, cooking and consumption of food and from the handling, storage and sale of food products and the carcasses of animals.

2. "Rubbish" includes all waste paper, paper cartons, tree branches, yard trimmings, discarded furniture, tin cans, dirt, ashes, bottles and all other unwholesome material of every kind not included as garbage.

3. "Refuse" includes garbage and rubbish.

4. "Dump and dumping" includes leaving refuse in any area outside of a waste disposal container or authorized area.

5. "Trespass" consists of unlawfully entering or remaining on posted land or fenced land within the exterior boundaries of the Pueblo of Pojoaque ("Pueblo") without possessing written or oral permission from the Pueblo.

6. "Posted land" includes Pueblo lands, roads, buildings, access route, or enclosures that are posted with notices that are printed legibly in English and state a specific prohibition (such as "no trespassing," "no dumping," "no hunting," "no fishing," or "no digging").

7. "Fenced land" includes Pueblo lands, roads, buildings, access route, or enclosures that are fenced with wire, strung or unstrung, or have opened or unopened gates.

8. "Prohibited vehicles" include dirt bikes, motorcycles, and all-terrain vehicles.

(b) Procedures.

1. Any violation of this Ordinance will be subject to a civil complaint to be issued by the Pueblo of Pojoaque Tribal Police or their commissioned designee.

2. Any violation of this Ordinance will be subject to the exclusive jurisdiction of the Pueblo of Pojoaque Tribal Court.

(c) Penalties.

1. Each day that a dumping or trespassing harm occurs is construed a separate violation.

2. Any person who enters upon posted or fenced land within the exterior boundaries of the Pueblo is subject to a trespassing fine of not less than ten dollars ($10) nor more than one hundred dollars ($100).

3. Any person who enters upon posted or fenced land within the exterior boundaries of the Pueblo and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features is subject to a trespassing fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). Such offender is also liable for restoration of any injury, damage or destruction within the posted area.

4. Any person who enters upon posted or fenced land within the exterior boundaries of the Pueblo in a motor vehicle is subject to a fine of one hundred dollars ($100) to one thousand dollars ($1,000). The offender may also be charged towing and ten dollars ($10) daily storage costs.

5. Any person who enters upon posted or fenced land within the exterior boundaries of the Pueblo in a prohibited motor vehicle is subject to mandatory confiscation of the prohibited motor vehicle and transfer of title of the vehicle to the Pueblo of Pojoaque. The offender may also be charged towing and ten dollars ($10) daily storage costs.

6. Any person who enters upon posted or fenced land within the exterior boundaries of the Pueblo and illegally dumps refuse is subject to a dumping fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). Such offender is also liable for collecting and hauling away the illegal refuse.

T-2 Hazardous and Unsightly Conditions in Butterfly Springs Mobile Home Park

(a) All trash and inoperable vehicles shall be removed by the Mobile Home Park renters no later than July 3, 1998.

(b) All pets shall be kept on a leash immediately.

(c) Any renter who does not remove their trash and inoperable vehicles removed by July 3, 1998 shall have such trash and inoperable vehicles removed by the Realty Department. The Realty Department shall charge no more than one thousand dollars ($1,000) for such removal and/or storage. After the removal the renter shall be subject to eviction within seven (7) days after a hearing in the Pueblo of Pojoaque Tribal Court.

(d) Any pet not kept on a leash shall be picked up immediately by the Santa Fe Animal Control Unit or the Tribal Police.

T-3 Inoperative Vehicles

(a) All inoperative vehicles that are in public view are to be removed or placed out of sight. Inoperative vehicles that are in public view may be a safety hazard or an unsightly nuisance.

(b) An "inoperative vehicle" is defined as a motor vehicle that is inoperable, whether temporarily or permanently, due to flat tires, missing tires or wheels, or in a state of disrepair, or not drivable.

(c) "Public view" is defined as in public view and without a proper vehicle cover or without shielding by a fence.

(d) Any inoperative vehicle within the Pueblo of Pojoaque may be cited by written notice by the Pueblo of Pojoaque Tribal Police. The written notice shall be attached to the vehicle. The written notice shall order the vehicle to be repaired or removed from the public view within seven (7) days.

(e) If the vehicle is not repaired or removed from the public view, the Tribal Police shall issue a written citation. The written citation shall summons the owner of the vehicle to Tribal Court.

(f) If the owner appears before the Court, and shows good cause of his intention to repair or to sell the vehicle, the owner shall have up to one (1) year from the date of the original written notice attached to the vehicle within which to completely accomplish the sale or repair of the vehicle. If the owner fails to repair or sell the vehicle within the one (1) year period, the Court shall order the vehicle towed from the property to a towing yard.

(g) If the owner does not appear before the Court, vehicle shall be towed from the property to a towing yard. The owner shall be responsible for any towing and storage fees. The owner may also be subject to a fine of up to five hundred dollars ($500).

T-4 Rules and Regulations Related to Water and Wastewater Systems

(a) The Tribal Works Department is authorized and empowered to promulgate Rules and Regulations, to enforce its Rules and Regulations and to assess fines and charges.

(b) The Tribal Court has exclusive jurisdiction to interpret and enforce the Rules and Regulations and to hear appeals from decisions and actions of the Tribal Works Department.

T-5 Emergency Pollution Abatement

(a) Executive Power to Issue Emergency Restraining Orders.

1. Executive Powers. The Governor, upon receiving evidence that a pollution source or combination of sources is presenting an imminent danger to the health and welfare of residents of the Pueblo or the environment of the Pueblo, may issue an emergency restraining order to restrain any person to stop the discharge or pollutants or otherwise causing or contributing to pollution, in accordance with this Section.

2. Procedures for Issuance of Emergency Restraining Orders.

A. The Governor may issue an emergency restraining order if he or she has reasonable grounds to believe that a polluting activity may pose an immediate, imminent threat of irreparable injury, loss, or damage to the health, safety and welfare of the residents of the Pueblo or the integrity of the Pueblo environment, or is in violation of a tribal or federal environmental law, regulation, code, or ordinance.

B. Except as otherwise provided in this Ordinance, written notice of the emergency restraining order shall be given to the owner, operator, agent, or other person with apparent or actual authority at the site of the polluting activity ("Adverse Party").

C. No emergency restraining order shall be issued by the Governor without notice to the Adverse Party, unless it clearly appears that immediate and irreparable injury, loss, or damage will result to the health and safety of the residents of the Pueblo or the integrity of the Pueblo environment before notice can be served. Every emergency restraining order:

i. Shall be written, endorsed with the date and hour of issuance, and filed forthwith in the clerk's office of the Pueblo of Pojoaque Tribal Court within five (5) days of its issuance entered on the record;

ii. Shall define the injury and state why it is irreparable and, if applicable, why the order was entered without notice; and

iii. Shall expire by its terms within such time after entry, not to exceed ten (10) days, unless within that time the Governor for good cause shown moves the Tribal Court for a preliminary or permanent injunction.

D. The motion for a preliminary or permanent injunction shall be set down for hearing by the Pueblo of Pojoaque Tribal Court at the earliest possible time and shall take precedence over all matters except older matters of the same character. For good cause shown, the Pueblo of Pojoaque Tribal Court also may extend the emergency restraining order for up to an additional five (5) days or until the hearing.

E. When the motion is heard, the Governor shall proceed with the application for a preliminary or permanent injunction. Should the Governor fail to do so, the Tribal Court shall dissolve the emergency restraining order.

F. On two (2) days' notice to the Governor, or on such shorter notice as the Pueblo of Pojoaque Tribal Court may prescribe, the Adverse Party may appear and move for the dissolution or modification of the emergency restraining order and, in that event, the Tribal Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) Judicial Power to Issue Preliminary and Permanent Injunctions.

1. Judicial Power. The Tribal Court may issue a preliminary or permanent injunction to restrain any person to stop the discharge of pollutants causing or contributing to pollution that represents a substantial danger to the health and welfare of residents of the Pueblo or the environment of the Pueblo.

2. Procedures for Issuance of Preliminary or Permanent Injunctions.

A. No preliminary or permanent injunction shall be issued without notice to the Adverse Party and a hearing.

B. Every order granting an injunction and every restraining order shall be specific in terms, shall describe in reasonable language, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, attorneys and advocates, and upon those persons in active consent or participation with them who receive actual notice of the order by personal service or otherwise.

C. A preliminary or permanent injunction may be granted on the following grounds:

i. When it appears by the pleadings or affidavits on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of either for a limited period or perpetually, or that the commission or continuance of some act would produce great or irreparable injury to the party seeking injunctive relief;

ii. When it appears that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action; or

iii. In all cases where an injunction would be proper in equity.

T-6 Utility Board Ordinance

(a) General Provisions.

1. Title and Date. This ordinance shall be titled the Pueblo of Pojoaque Utility Board Ordinance. The ordinance shall be effective immediately upon adoption by resolution by the Pueblo of Pojoaque Tribal Council.

2. Purpose. The purpose of the Pueblo of Pojoaque Tribal Utility Board Ordinance is to define the policies, establish an organization and identify the necessary rules and regulations for the operation, maintenance and management of the various tribal utilities located on the Pueblo of Pojoaque.

3. Policy. It shall be the policy of the Pueblo of Pojoaque to operate, maintain and manage the tribal works services on the Pueblo of Pojoaque so that the community residents are provided with a high level of service designed to minimize exposure to adverse conditions which could negatively impact the delivery of potable water and sanitation services. It shall also be the policy of the Pueblo of Pojoaque that the operation maintenance and management of the tribal works shall be carried out through an efficient program and in a financially responsible, cost effective, and self-sufficient manner.

4. Jurisdiction. The Pueblo of Pojoaque, as a sovereign, federally-recognized Indian Tribe has the inherent authority and regulatory, legislative and adjudicatory jurisdiction to govern all matters involving tribal utilities and to levy appropriate user fees to all residents and organizations operating on the Pueblo of Pojoaque.

5. Mission Statement. The mission of the Pueblo of Pojoaque Utility Board is to direct, oversee, and enforce the development and implementation of water, wastewater, and solid waste systems in the Pueblo of Pojoaque properties for the purpose of providing quality services.

(b) Definition of Terms. Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be set forth in this subsection.

1. "Appurtenances" are the real and personal property owned by the Tribal Works Department or the Tribe located on, near or under the roadways and streets, such as fire hydrants and valves.

2. "Customer" means a person, business, agency or other organization the uses, is entitled to use, or is obligated to pay for the use or receipt of services from the Tribal Works Department.

3. "Customer lines" are the potable water lines located immediately adjacent to, inside of, or under a customer's residence or other building or property, which are either connected to utility service lines or are maintained by the customer separately from utility service lines.

4. "Solid waste" shall mean all degradable and non-degradable refuse and solid waste without economic value that is generated through the course of normal living by the residents and organizations in the community.

5. "Distribution system lines" are those potable water lines maintained by the Tribal Works Department by which water Tribal Works Services are provided to customers.

6. "Meter" is a device, owned by the Tribal Works Department, for measuring the amount of water Tribal Works Services provided to a particular customer.

7. "Manager" shall mean an individual hired by or appointed by the Pueblo of Pojoaque Utility Board to oversee and manage the operation of the Tribal Works Department.

8. “Operator” shall mean an individual hired by or appointed by the Pueblo of Pojoaque Utility Board or manager to provide direct day to day preventive maintenance and operational service for the tribal water and sanitary sewer utilities.

9. “On-site sewage treatment and disposal systems” shall mean individual or community septic tanks and subsurface drain fields and associated appurtenances that collect, treat and dispose of liquid waste generated by customers, which are maintained and operated by the Tribal Works Department.

10. “Off-Pueblo” is any area located outside of the exterior boundaries of the Pueblo of Pojoaque.

11. “Regulation” is a rule of law or procedure duly adopted by the Pueblo of Pojoaque Utility Board and approved by the Tribal Council for purposes of implementing the requirements of this ordinance.

12. “Septic system Contractor” shall mean any individual, firm, contractor or organization who the Pueblo of Pojoaque Utility Board or individual homeowner contracts with, to pump out on-site sewage treatment and disposal systems and dispose of the waste material and/or to repair the on-site sewage treatment and disposal systems located on the Pueblo of Pojoaque.

13. “Community,” for purposes of this ordinance, shall include, but not necessarily be limited to, non-Tribal members encompassed and using Tribal utilities.

14. “Tribal Community,” for purposes of this ordinance, shall include, but not necessarily be limited to, enrolled Pueblo of Pojoaque Tribal members and Pueblo owned properties.

15. “Contractor” shall mean any individual, firm, contractor or organization who contracts with the Pueblo of Pojoaque Utility Board to provide environmental services or utility repairs, design, inspection, reconstruction or operation.

16. “Tribal Works Services” are those basic services necessary for supporting residential and commercial development, including, but not limited to, water, sewer, solid waste collection, roads and appurtenances.

17. “Pueblo of Pojoaque Utility Board” is the agency responsible for, and authorized to manage, the Trial Works Department of the Pueblo of Pojoaque, as established by this ordinance.

18. “Tribal Works Department” is a governmental department of the Pueblo of Pojoaque authorized to operate the Tribal Works Services provided by the Tribe.

19. “Department” shall mean the Tribal Works Department of the Pueblo of Pojoaque.

20. “Vendor” is any individual firm, contractor or organization who regularly supplies parts, equipment, supplies and services to the Tribal Works Department used in the operation maintenance and management of the Tribal Works Service of the Pueblo of Pojoaque.

21. “Collection Lines” are those sanitary waste water mains maintained by the Tribal Works Department by which sanitary sewer collection and disposal services are provided to customers.

22. “Shall” is mandatory; “may” is permissive.

(c) Pueblo of Pojoaque Utility Board and Tribal Works Department.

1. Establishment of Pueblo of Pojoaque Utility Board. There is hereby established the Pueblo of Pojoaque Utility Board to serve as the advisory, administrative and management department for the Pojoaque Tribal Works Department.

2. Function of Tribal Works Department. There is hereby defined the function of the Pojoaque Tribal Works Department having the responsibility for operating and maintaining the tribal utilities and providing essential community environmental services directly or by contract and directed by the Pueblo of Pojoaque Utility Board.

3. Pueblo of Pojoaque Utility Board Operating Organization. The Pueblo of Pojoaque Utility Board shall operate as a subordinate unit of tribal government, independent in its daily operation, but responsible to the Tribal Council for its actions. The methods of appointment, terms of office, and operating procedures of the Pueblo of Pojoaque Utility Board shall be set forth in this ordinance and in regulations adopted by the Pueblo of Pojoaque Utility Board.

4. Pueblo of Pojoaque Utility Board – Powers and Responsibilities. The Pueblo of Pojoaque Utility Board shall direct the tribal utilities of the Tribe, and obtain and disburse funds as required for planning, construction, operation, maintenance, training, and expansion of the tribal utilities. To fulfill these responsibilities, the Department shall have the power to:

A. Levy and collect reasonable fees for Tribal Works Services.

B. Provide for the hiring, training and compensation of appropriate management and maintenance personnel.

C. Adopt appropriate regulations to implement the requirement of this ordinance.

D. Authorize disbursement of funds for planning, construction, operation, maintenance, training, and repair of Tribal Works Services.

E. Contract with vendors and contractors to assure that safe and reliable environmental services are available to and utilized by the residents of the Pueblo of Pojoaque.

F. Authorize investment of Tribal Works Department funds in accordance with Subsection (d)(6).

G. Poll and survey residents for service expansions.

H. Establish a "Collection and Payment Policy".

I. Coordinate activities, services and enforcement with the Pueblo of Pojoaque Tribal Works Department and any other tribal agencies as necessary.

J. Adopt and use a corporate seal.

K. Enter into Memoranda of Understanding/Agreement with Federal, State, Local or Tribal Agencies.

L. Enter into debt obligation in order to provide funding for needed construction within the Tribal Works Department fiscal year budget for, repairs, operations, maintenance and management of the tribal utility service, other debt obligations in excess of the approved fiscal year budget require prior Tribal Council approval.

M. Responsibility to develop, authorize and utilize an annual budget in order to guide and support the operations of the trial works department.

5. Pueblo of Pojoaque Utility Board – Membership. The Pueblo of Pojoaque Utility Board shall be composed of seven (7) persons appointed by the Tribal Council. The Board shall elect from among its members a Chairman, Vice-Chairman, a Secretary, and a Treasurer; no member shall hold more than one elected position. The Council shall ensure that at least one of the five (5) board members shall not be a member of the Tribal Council. Members of the Pueblo of Pojoaque Utility Board shall be known as Utility Board.

6. Term of Office. Except for the initial Board membership, all Board Members will have staggered two (2) year terms. Initial Board members shall serve as follows (these terms shall expire upon the swearing in of newly appointed Board members):

Chairman	(Position 1) – 1 – 4 years
Vice-Chairman	(Position 2) – 1 – 4 years
Secretary	(Position 3) – 1 – 4 years
Treasurer	(Position 4) – 1 – 4 years
Board members	(Position 5) – 1 – 4 years

In the event that a Board member loses or resigns his position on the Utility Board, his appointment to the Pueblo of Pojoaque Utility Board shall expire immediately, and the Council shall fill the vacancy by appointment of a new Board member at the next regular

meeting of the Tribal Council. An outgoing Board member may be re-appointed by the Tribal Council.

7. Pueblo of Pojoaque Utility Board – Method of Appointment. The Tribal Council shall annually appoint persons to fill all Pueblo of Pojoaque Utility Board vacancies. The Tribal Council shall solicit interested community members for nomination to the Board positions. For all Board positions, the Council shall choose persons capable and willing to perform the duties of the Department. After receiving nominations, the Council shall appoint the Board member.

8. Pueblo of Pojoaque Utility Board – Vacancies. If a Board member resigns, moves from the local area, dies, or is found guilty of a felony or major crime in any court of law, the Tribal Council shall declare the Board position vacant. If any Board member misses two (2) consecutive Pueblo of Pojoaque Utility Board meetings without a valid excuse, the Tribal Council may declare the position vacant. All vacancies shall be filled within one (1) month in accordance with this Section. In the event that the number of unfilled Board vacancies prevents gathering of a quorum for purposes of conduction business, the Tribal Council may act as the interim Pueblo of Pojoaque Utility Board until such time as the filling of the vacancies allows for a quorum.

9. Officers. Within ten (10) days after the appointment of the initial Board, there shall be an organizational meeting of the Pueblo of Pojoaque Utility board to elect a Chairman, Vice Chairman, Secretary, and Treasurer from among the Board members. All vacant Officer appointments shall be elected immediately following the annual appointment of the new Board.

10. Duties of Officers. Officers of the Pueblo of Pojoaque Utility Board shall assume the following duties:

A. Chairman – Shall preside at all meetings; call and arrange all meetings; be responsible for all general management of the Utility Authority's affairs; serve as the Pueblo of Pojoaque Utility Board representative at Tribal Council meetings; and perform all duties incidental to the office.

B. Vice-Chairman – Shall perform all of the Chairman's duties in the absence of the Chairman; and shall assist the Chairman as required in handling the Pueblo of Pojoaque Utility Board's affairs.

C. Secretary – Shall keep or cause to be kept a complete and accurate record of all meetings and shall maintain all correspondence, notices and records of the Pueblo of Pojoaque Utility Board.

D. Treasurer – Shall be responsible for oversight of financial records of the Tribal Works Department; shall report the Department's financial status at each regularly scheduled Pueblo of Pojoaque Utility Board meeting; shall present to the Board for their action all request for funds to meet the Department's financial obligations; shall

prepare an annual financial statement for submission to the Tribal Council for the general membership meeting; and further, the Treasurer shall provide oversight for all Pueblo of Pojoaque Utility Board accounts in accordance with appropriate sections of this ordinance.

11. Indemnification of Directors, Officers, and Employees. The Board shall indemnify any director, officer, or employee or former director, officer, or employee of any person who may have served at its request as a director, officer, or employee against reasonable expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being, or having been such director, officer, or employee of the Board or Department, if a majority of Board members indemnification, shall determine in good faith (a) that such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent; (b) that any legal fees paid or any settlement made are reasonable; and (c) that the person seeking indemnification had not acted beyond the scope of his employment. The Board shall also reimburse any director, officer, or employee for reasonable costs of settlements of any such action, suit, or proceeding if it shall be found by a majority of the Board, other than directors involved in the matter of controversy, that it is in the best interest of the Pueblo that such settlement be made and that (a) such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent, and (b) that any legal fees paid or any settlements made are reasonable.

12. Quarterly Public Meetings. The Pueblo of Pojoaque Utility Board shall meet when business demands and requires attention, but in no case less than once per three (3) month period. The Chairman shall call both regular and special meetings. Any two (2) Board members may request the Chairman, in writing, to schedule a special meeting of the Pueblo of Pojoaque Utility Board. If the Chairman fails to schedule a special meeting within five (5) days after receipt of a written request, any other two (2) Board members may call such a meeting. Meetings shall be held in public places, and the Pueblo of Pojoaque Utility Board shall provide at least five (5) days public notice of public meetings. Emergency meeting may be convened with less than five (5) days' notice, in case of emergency where loss of life, limb or property is threated, or where the continued operation or fiscal capability of the tribal utilities may be in jeopardy. All meetings shall be open to members of the tribal community and users of the tribal utilities.

13. Executive Meetings. The Pueblo of Pojoaque Utility Board shall be able to hold executive session meetings as needed to discuss business that does not require public input. These meetings may be held in conjunction with the quarterly public meetings.

14. Quorum and Voting. A minimum of three (3) Board members is required to establish a quorum and conduct Pueblo of Pojoaque Utility Board business. The act of a majority of the members voting at a meeting at which a quorum is present shall be the act of the Board. Each Board member of the Pueblo of Pojoaque Utility Board, except the Chairman, shall be entitled to vote on each matter coming properly before the Pueblo of Pojoaque Utility Board. The Chairman shall vote only in the event of a tie. In the case that the Chairman is

not present to cast a tie-breaking vote, the issue being voted upon must be tabled until the next meeting. Casting votes by proxy are specifically disallowed by this ordinance.

15. Meeting Agenda. Regular meetings of the Pueblo of Pojoaque Utility Board shall be conducted according to the following agenda outline:

A. Call to Order

B. Roll call

C. Reading of minutes of previous meeting

D. Report by Treasurer

E. Report by Manager and/or Operator

F. Unfinished business

G. New business

H. Miscellaneous business

I. Adjournment

16. Compensation. Board members of the Pueblo of Pojoaque Utility Board shall serve without monetary compensation, except as determined by the Tribal Council. The Tribal Council shall establish rates for mileage, per diem, or other costs, consistent with tribal policy, and shall direct the Pueblo of Pojoaque Utility Board to approve such expenditures; provided that funds are available within the Tribal Works Department budget approved by the Pueblo of Pojoaque Utility Board and ratified by the Tribal Council.

17. Public Hearings. The Pueblo of Pojoaque Utility Board may convene public hearings to discuss changes in services, construction of services or utility rates assessed to users of tribal utilities. All users of tribal utilities shall be afforded seven (7) days written notice of such hearings, and adequate notices shall be posted at appropriate places within the community.

(d) Management and Finances.

1. Management Personnel. The Pueblo of Pojoaque Utility Board shall manage the business and operating affairs of the Tribal Works Department. The Pueblo of Pojoaque Utility Board may provide for hiring, training and contracting personnel for the care and maintenance of the Tribal utilities (provided that hiring shall be in accordance with tribal personnel policies), and shall establish compensation rates consistent with the Tribal Works Department approved budget. The Pueblo of Pojoaque Utility Board may delegate

only those management duties that are not specifically designated as duties to be performed exclusively by the Pueblo of Pojoaque Utility Board.

2. Annual Budget. The Pueblo of Pojoaque Utility Board shall establish an annual budget enumerating the necessary costs of Tribal Works Department operation, maintenance, training, administration, personnel, liability and other insurance, replacement, and a reserve for major repairs and replacements. The annual budget shall be approved or ratified by the Tribal Council.

3. User Fee Schedule. The annual budget shall be used to determine a fee schedule to be assessed to the users of Tribal Utilities. The budget and fee schedule shall be approved by the Pueblo of Pojoaque Utility Board and ratified by the Tribal Council.

4. Fiscal Year. The fiscal year for the Tribal Works Department shall be the same as the fiscal year of the Trial Council.

5. Depository. The depository of the Tribal Works Department shall be a separate commercial account or accounts in any bank selected by the Pueblo of Pojoaque Utility Board. Said account shall be in the name "Pueblo of Pojoaque Utility Board".

6. Accounting Practices. Funds on deposits in excess of thirty (30) days working capital may be invested in insured deposits at a commercial bank, savings and loan association or investment company offering the highest interest rate, provided that investment deposits shall have immediate liquidity. The Pueblo of Pojoaque Utility Board Treasurer shall make investment deposits. Withdrawals of investments require the approval of the Pueblo of Pojoaque Utility Board. Withdrawals from accounts shall be signed by two (2) of the officers of the Pueblo of Pojoaque Utility Board.

7. Disbursements and Receipts. The Pueblo of Pojoaque Utility Board shall determine the distribution of funds required for the operation, maintenance and management of the Tribal Works Services. Disbursements will be made by check upon presentation of invoices or vouchers. The Officers of the Pueblo of Pojoaque Utility Board or employees properly designated by the Pueblo of Pojoaque Utility Board shall make disbursements. The checks written on Pueblo of Pojoaque Utility Board accounts shall have two (2) signatures. Checks or cash received will be immediately placed in the depository. Receipts will be issued for all cash received and copies filed and retained for accounting.

8. Records and Accounts. Suitable financial records shall be maintained for all expenditures, receipts from payments for services, investments and returns on investments, and any other financial matters necessary for operation of the Tribal Works Department. The separate accounting records for the Department shall be maintained in an appropriate business like manner. The records of the accounts shall be made available to the Tribal Council upon request.

9. Exclusive Use of Funds. The funds accrued by the Pueblo of Pojoaque Utility Board and kept on deposit are for the exclusive use of the Tribal Works Department for the

necessary operation, maintenance, and management of the Tribal Works Services. Pueblo of Pojoaque Utility Board funds shall not be transferred or loaned to the Tribal General Fund or any other accounts of the Tribe or other Tribal departments, except to pay for services provided to the Pueblo of Pojoaque Utility Board or Department by other Tribal Departments.

10. Audit and Reports. The accounts of the Pueblo of Pojoaque Utility Board will be independently audited annually at the close of the fiscal year at the expense of the Department. The Pueblo of Pojoaque Utility Board will submit annual and requested periodic reports to the Tribal Council.

11. Bonding. Board members of the Pueblo of Pojoaque Utility Board and any other person(s) designated to handle funds for the Tribal Works Department, shall be bonded for amount up to one hundred thousand dollars ($100,000).

12. Insurance. Fire and other insurance on property owned or used by the Department or on property in which the Department has an insurable interest shall be in amounts and type of coverage specified by the Pueblo of Pojoaque Utility Board. Insurance may be part of the Tribal insurance policies, with the expenses thereof pro-rated Department if so directed by the Tribal Council.

13. Petty Cash. A petty cash fund shall be established in the amount of fifty dollars ($50.00). This fund may be used to pay small expenses, when necessary, and to pay small obligations when it is not feasible to pay by check on the official depository. The fund may be reimbursed periodically from the official depository of the Pueblo of Pojoaque Utility Board in the amount of and upon the submittal of receipts, vouchers and statements signed by the payees, of their proof of expenditure. The Treasurer shall certify petty cash reimbursement vouchers.

14. Regulations and Policy. The Pueblo of Pojoaque Utility Board shall have the authority to adopt appropriate regulations and policy as needed to implement the provisions contained in this ordinance.

15. Regulation; Policy Suspension Alteration. No regulation duly adopted by the Pueblo of Pojoaque Utility Board may be suspended or altered by any person without prior written authorization of the Pueblo of Pojoaque Utility Board.

16. Amendments. The Pueblo of Pojoaque Utility Board shall recommend amendments to this ordinance that it believes necessary to promote the efficient, cost effective and self-sufficient operation of the Tribal Works Department, and shall present such amendments to the Tribal Council for approval.

17. Grievances. Any customer or any applicant for Tribal Works Services, who is aggrieved by any action of the Tribal Works Department or the Pueblo of Pojoaque Utility Board, may file a grievance with Pueblo of Pojoaque Utility Board. The Pueblo of Pojoaque Utility Board shall abide by the regulations set forth in this ordinance and shall

handle such grievances in a manner which provides for due process of tribal law. All decisions by the Pueblo of Pojoaque Utility Board on matters that have been submitted for grievance under the Department's grievance procedures shall be considered final. Final decisions of the Pueblo of Pojoaque Utility Board may be appealed to the Tribal Council by an aggrieved party only on the basis that the Department's grievance procedures were not followed, or that due process was denied.

18. Non-Waiver of Sovereign Immunity. The Council herby gives its consent to allowing the Board to sue and be sued in the Board's name, upon any contract, claim or obligation arising out of the Board's activities under this ordinance; provided, however, the Board is not obligated to sue or to allow itself to be sued and this clause in itself is not a express waiver of sovereign immunity of the Board. The Board possesses all rights, privileges and immunities from suit and other proceedings as are possessed by the Pueblo. Any waiver of the Board's rights, privileges or immunities must be express and unequivocal and be approved by the Tribal Council. The Board's exercise of its authority may not be considered consent to the attachment upon any asset of the Board other than assets pledged as collateral for an underlying obligation in accordance with applicable law. Any waiver of sovereign immunity of the Board is not intended to be, nor shall it be construed as, a waiver of sovereign immunity of the Pueblo, nor shall any such waiver create a liability on the part of the Pueblo or be considered a consent to the attachment upon any interest in assets of the Pueblo.

19. Jurisdiction and Choice of Law. The Pueblo of Pojoaque Utility Board and the Tribal Works Department are under the exclusive jurisdiction of the Pueblo of Pojoaque Tribal Court. All matters shall be construed in accordance with the public policy and Law and Order Code of the Pueblo of Pojoaque.

(e) Tribal Works Department – Operation.

1. Services Provided. The services provided by the Tribal Works Department shall include domestic water, sewer and solid waste. The Pueblo of Pojoaque Utility Board may provide additional services upon approval or ratification by the Tribal Council.

2. Water Service. The Pueblo of Pojoaque Utility Board is responsible to provide safe, adequate water for a fee to those houses, businesses and institutions connected to the main lines of the community water system. Responsibility for maintenance will include water sources, storage tanks, controls, mainlines, valves and hydrants, and service lines from the mail to the curb stops only. The service line from the curb stop to the house and interior house plumbing are the responsibility of the customer. Where installed, the individual household water meters are owned by the Pueblo of Pojoaque Utility Board and it is the responsibility of the Department to maintain and read the meters. The tribal community water systems shall be managed such that the regulatory requirements of the Federal Safe Drinking Water Act, as established by the Environmental Protection Agency, are satisfied.

3. Wastewater Service. The Pueblo of Pojoaque Utility Board is responsible to provide sanitary disposal of domestic liquid waste for a fee to those houses, businesses and

institutions connected to the mainlines of the community waste water system. Further, the Pueblo of Pojoaque Utility Board is responsible for the maintenance and repair of community sanitary sewage disposal systems. Responsibility for maintenance includes treatment facilities, pumping stations, mainlines, manholes, and services lines to the individual property lines or a point five (5) feet from the exterior of the home. Tribal wastewater collection, treatment and disposal systems shall be managed such applicable Federal regulations of the Clean Water Act and the National Pollution Discharge Elimination System are satisfied. The Pueblo of Pojoaque Utility Board is not responsible for maintenance of individual on-site sewage disposal systems, including individual pumping stations, or for pumping the septic tanks on a periodic basis. The service line from the property line to the house or the septic tank inlet to the house interior house plumbing are the responsibility of the customer.

4. Solid Waste Service. The Pueblo of Pojoaque Utility Board shall provide Solid Waste collection and disposal service for a fee for the houses located in the Pueblo community. The Pueblo of Pojoaque Utility Board will provide this service directly or enter into a contract with a nearby solid waste collection contractor in order to provide this service to the community.

5. Future Services. At some future date the Pueblo of Pojoaque Utility Board may assume responsibility to provide electrical, gas, telephone, cable TV or other Tribal Works Services.

6. Maintenance Schedule. The Pueblo of Pojoaque Utility Board shall develop and follow a regular schedule of maintenance service for each water and waste water system and components thereof.

7. Personnel. The Pueblo of Pojoaque Utility Board shall have the full authority to hire, train, evaluate and discipline or fire if necessary the personnel required to manage, operate and maintain the Tribal Utilities. Existing Tribal Staff may be used and employed by the Tribal Works Department to provide necessary maintenance and management services through agreements approved by the Tribal Council and the Pueblo of Pojoaque Utility Board. The specific personnel policies of the Tribe shall be followed. Job descriptions for all employees will be developed and followed.

8. Purchasing. The Utility system operator may make or approve purchases from the petty cash fund for the amounts up to fifty dollars ($50.00). Above this amount, the Pueblo of Pojoaque Utility Board Treasurer must give approval and disburse funds according to appropriate sections of this ordinance. An accurate account and receipts of all expenditures shall be kept.

9. Equipment. All utilities equipment shall be maintained according to the established maintenance schedule and repaired when necessary so that disruptions in service are minimized. Utility tools and equipment are not for personal use. Equipment shall not be loaned to other Tribal Departments. A record of tools and the individual to whom they

were assigned shall be maintained. Individuals will be held responsible for the security of tools and supplies that are assigned to them.

10. Inventory. An accurate inventory of tools, equipment, and supplies will be updated annually. A reserve supply of repair parts and regularly used supplies will be maintained by the Department. A listing of equipment specifications and local suppliers of repair parts, replacement equipment and expendable supplies shall be kept by the Tribal Works Department.

11. Public Relations. The Pueblo of Pojoaque Utility Board shall keep customers notified about changes in fees, rates, solid waste collection schedule, water quality regulatory compliance, levels of service and any other information which may affect customer use of sanitary facilities. Notices may be included in monthly billing statements or may be disseminated to the public though separate mailings, newsletters, tribal newspaper or posting throughout the community. These notices must be filed thirty (30) days before proposed change. Any person filing a complaint or seeking information shall be given assistance in a courteous manner. Complaints may be presented verbally or in writing to any Department Staff member for resolution and action. Complaints that cannot be resolved within ten (10) days should be referred to the Pueblo of Pojoaque Utility Board in writing. The Pueblo of Pojoaque Utility Board will resolve such complaints at the next regularly scheduled meeting of the Board. The Chairman may call a special meeting of the Board to resolve complaints as deemed necessary.

12. Emergency Notification. An emergency notification plan will be developed by the Pueblo of Pojoaque Utility Board and reviewed annually for notifying residents and visitors. Notification shall be made in compliance with the applicable federal regulations. Emergency notification shall be required for the following situations:

A. Discontinued service for more than eight (8) hours.

B. Substandard conditions in water quality. This includes bacteriological, chemical or physical quality deficiencies.

C. Change in scheduling of refuse pick-up and septic tank pumping.

D. Any other conditions which may adversely affect the health of the community residents or visitors.

13. Staff Training. All employees that are newly assigned to operate the utility systems shall receive instruction from an experienced operator. A minimum of thirty-two (32) hours of instruction should be received before the new employee assumes responsibility for operations. Regular operators should receive a minimum in sixteen (16) hours and up to forty (40) hours of formal instruction per year. The Pueblo of Pojoaque Utility Board will assure that operators maintain current knowledge of water, waste water system and/or solid waste operation techniques. A training plan for the operators shall be developed which will provide for continuous upgrading of knowledge and skills in utility operations,

maintenance and management. The goal of the training program shall be New Mexico State certification in the respective field or equivalent.

14. Limits of Responsibility. The Department shall not be responsible for, nor shall it maintain or repair, any private or domestic water system, sewer system, or solid waste collection except by specific agreement establishing fair rates of compensation to the Department, and that is approved and signed by the Pueblo of Pojoaque Utility Board and owner of such facilities. The Department shall not be liable for any loss or damage beyond its control resulting from any defect in, or damage to, a customer's water mains, sewer mains, or solid waste storage facilities.

15. Right of Entry – Inspections. The Department, or its authorized representative, is hereby authorized to make limited, reasonable inspections, at reasonable times, of any grounds, building or residence served by the Tribal Works Department to the extent necessary to insure that customer utility fixtures, lines and equipment are not being operated in a manner that would likely disrupt or interfere with Tribal Works Services. Except in cases of emergency where life, limb, or property are threatened, or in cases of immediate water shortages, the Department shall give the customer at least twenty-four (24) hours' notice prior to requesting permission to enter and inspect. If permission to enter and inspect is denied or impeded in any way, the Department shall obtain a court order authorizing such entry and inspection. Where the permission to enter and inspect is unreasonably withheld, the Department may assess court costs and related expenses and add them to the affected customer's bill.

16. Disruption of Service. The Department may shut off water or waste water service, or disrupt traffic on the public right-of-way to perform repairs, provided that advance notice has been given to affected customers. Provided, however, that in cases of emergencies where loss of life, limb or property is threatened, or in cases of immediate water shortage, service may be disrupted without advance notice. The Department shall not be responsible for consequential damage as a result of lack of water or wastewater during authorized disruptions of service. The Department shall not be liable for any associated damages or delay caused by the breaking or leaking of any pipe, valve, fixture or other contrivance as a result of the lack of water or waste water to or from any mains, services, hydrants, lines or reservoirs during authorized disruptions of service.

17. Permits. No connection, re-connection with, disconnection from, or other private use of any Department water or sewer system, and appurtenance or other utility service or facility shall be made without a written permit by the Pueblo of Pojoaque Utility Board. No construction of any private water or sewer system, or other private utility is authorized without written permission from the Pueblo of Pojoaque Utility Board. The Pueblo of Pojoaque Utility Board may require such plans from the permit applicant as it determines are necessary to decide whether or not a permit should be issued.

18. Contractors/Subcontractors. Contractors and Subcontractors contracted with the Pueblo of Pojoaque must meet all state codes for new construction and repair and must follow Pueblo of Pojoaque policy and approval for installation of utilities. All mechanical,

electrical and structural work must have a letter of approval, meeting state code, by a certified professional engineer (PE) as work is completed. Requirements may be changed as needed in the field with prior approval by the Utility Board.

19. Water Shortage – Service Preference. In cases of a water shortage proclaimed by the Pueblo of Pojoaque Utility Board, the Department shall regulate the amount of water any customer may be allocated. The Pueblo of Pojoaque Utility Board also may give preference to the customers and/or amounts of water to be allocated, provided the Pueblo of Pojoaque Utility Board allocates water according to public necessity of convenience, and provides for fair allocations between customers. Any customer violating a legal allocation may have his water service discontinued. Service shall be resumed only upon payment of the approved reconnection fee and any penalties.

20. Unnecessary Waste of Water. The Pueblo of Pojoaque Utility Board reserves the right to terminate customer's service when the customer has repeatedly, unduly wasted water. Such undue waste may be evidenced by the fact that hydrants, taps, hoses and other fixtures are permitted to run continuously when not in productive use. Where such conditions have been observed, the Pueblo of Pojoaque Utility Board having been notified of the condition, may terminate water to the premise if the condition is not corrected within forty-eight (48) hours after receipt of the notice. Service shall be resumed only after correction of the condition causing a wastage of water and payment by the customer of the approved reconnection fee, penalties and any other amount delinquent to the Pueblo of Pojoaque Utility Board.

21. Conservation of Resources. The Department shall conduct operation, maintenance and repairs services in a manner that will maximize the conservation of natural, financial, and property resources. Customers of the Department shall be encouraged to conserve water resources and to limit water use as necessary to provide a comfortable, healthy and aesthetically pleasing life style. The Department may offer assistance and service to customers for water conservation and other material resources conservation and recovery as determined to be feasible by the Pueblo of Pojoaque Utility Board.

22. New Customer Service. Any dwelling within the service area of the Utilities shall be eligible for service, provided all of the following conditions are met:

A. Facilities are adequate to meet additional load.

B. New customer agrees to adhere to this ordinance.

C. Approval by the Tribal Works Department.

(f) Customer Obligations.

1. Condition for Service – Payments. As a condition for receiving Tribal Works Services form the Tribal Works Department, the customer agrees to comply with all provisions of this ordinance, and any regulations duly adopted by the Pueblo of Pojoaque Utility Board

as well as any other applicable codes or regulations, including being current in the payment of all fees, penalties, costs, damages, or other charges assessed by the Department.

2. Maintenance, Repairs, and Liability. The Customer shall be responsible for maintaining and repairing water and sewer lines located on or in the customer's grounds, building or residence in compliance with applicable regulations. The customer shall notify the Tribal Works Department and New Mexico One-Call (800) 321-2537 in advance of major maintenance or repairs planned for water or sewer lines. The customer shall permit the Department to inspect the work for compliance with applicable regulations. The customer shall be liable for any damage to the Department's lines, equipment or other property caused by the customer, his family, guests, tenants, agents, employees, contractors, licensees or other persons under the customer's control or authority.

3. Customer Termination of Service – Abandonment. A customer planning to vacate any grounds, building or residence served by the Department shall notify the Department in writing one (1) week prior to the date the customer plans to either vacate or terminate service, whichever is later. A customer who fails to give notice is responsible for all charges accrued up to one (1) week after the Department receives notice, or until service is terminated, whichever comes first.

4. Water Shortages. During water shortages declared by the Pueblo of Pojoaque Utility Board, the customer shall limit his use of water according to allocations established by the Pueblo of Pojoaque Utility Board.

5. Inspections. The customer shall not unreasonably withhold permission for the Department to enter and inspect the Department's and customer's fixtures, lines and equipment when necessary to insure that they are operating in a manner that would not likely disrupt or interfere with Tribal Works Services. The customer shall be liable for any cost or related expenses caused by his unreasonable withholding of permission.

6. Permits. The customer shall obtain written permission from the Pueblo of Pojoaque Utility Board prior to making any connection or re-connection to, disconnection from, or other private use of any Department water or sewer system, appurtenance, or other utility service or facility. The customer shall obtain written permission from the Pueblo of Pojoaque Utility Board prior to constructing any private water or sewer system, or other private utility.

7. Cross-Connections. The customer shall not make a cross-connection with Tribal Water supply. A cross-connection is defined as any physical connection between the Tribal Water system and another piping system, either water or waste. Any individual source must be totally disconnected from the household plumbing prior to connection to the Tribal Water Supply. "Disconnection" done solely by a valve shall not be allowed.

8. Solid Waste Facilities. The homeowner may provide his own refuse containers and shall maintain the cans and holding facility in a manner that prevents the harborage of

rodents and vermin. There shall be no excessive accumulation of refuse, solid waste in the community or around individual homes.

9. Use of Waste Water System. The customer shall use the waste water collection, treatment and disposal system only for the disposal of normal household liquid waste including waste from toilet facilities, shower and bathing facilities and kitchen facilities.

10. Unauthorized Disposal. The customer shall not dispose of any material into the sanitary sewer which may cause the collection lines or subsurface drain field to become blocked or excessively loaded with solids, including but not limited to grease, solid waste, disposable diapers, sanitary napkins, paper material other that toilet paper, cigarette waste, cat litter, etc.

11. Toxic Waste Disposal. No customer shall dispose of any toxic, radioactive or otherwise hazardous waste into any Tribal Works Department or private waste water system. Toxic and hazardous waste include but are not limited to: oil, pesticides, gasoline, organic solvents, paint, poisons and other manufactured chemical compounds.

(g) Fee Schedules and Billing.

1. Fee Schedule Establishment. The schedule of fees for Tribal Works Services shall be established annually by the Pueblo of Pojoaque Utility Board. The fee schedule shall be based on the historical and estimated average annual costs for operation of all Tribal Works Services. The fee schedule shall include a basic rate for all services and other fees, charges, penalties and assessments that the Pueblo of Pojoaque Utility Board is authorized to levy as provided under various sections of this ordinance. Payment for the basic services shall be required of each customer regardless of whether, or the extent to which, the customer uses any of the services. The fee schedule may be adjusted as needed to meet utility operating expenses.

2. Public Hearing. The Pueblo of Pojoaque Utility Board shall hold a public hearing whenever a new fee schedule is proposed for adoption. Five (5) days in advance of the hearing, the proposed fee schedule shall be sent to each customer and shall be posted in appropriate places. Following the public hearing the Pueblo of Pojoaque Utility Board shall set a fee schedule, taking into consideration comments received at the hearing.

3. Notice to Customers. A copy of the fee schedule adopted by the Pueblo of Pojoaque Utility Board shall be sent to each customer at least thirty (30) days prior to the date the established fees take effect.

4. Billing Responsibility. The Pueblo of Pojoaque Utility Board is responsible for billing customers for Tribal Works Services. The billing service, however, may be contracted to the Pueblo of Pojoaque Tribal Works Department, or other agency or firm at the discretion of the Pueblo of Pojoaque Utility Board and Tribal Council.

5. Monthly Statement. Each month the Tribal Works Department shall mail or otherwise deliver a statement detailing the following information to all utility customers:

A. The customer's name and account number

B. The types and levels of service used in the current month

C. The billed cost of the current month's service, plus an accounting of bills or charges past due, if any

D. The date the payment is due

E. The location to mail or deliver payment

6. Due Date. Pueblo of Pojoaque Utility Board regulation shall establish the monthly date on which payment will be due.

7. Payments Past Due. Payments not received within six (6) days after the established due date are considered past due. The Tribal Works Department shall issue a notice of payment past due to the customer, detailing the payment owed and the consequences for failure to pay. The notice shall be sent no later than the date the next billing is sent out and if not complied with will follow guidelines stated in Section (h).

8. Delinquent Account. If the payment past due is not paid within six (6) days after the next regular monthly due date, the account shall be declared delinquent.

9. Notice of Delinquency. The Department shall immediately notify the customer in writing once his account has been declared delinquent, and list the sanctions that may be imposed without further notice. Notice of delinquency shall be made by certified mail or such other means to provide proof of receipt by the customer.

10. Advance Deposits. The Pueblo of Pojoaque Utility Board may require each new customer to pay an advance deposit equal in amount to the basic monthly rate fees for the first month of service, prior to receiving services. The Pueblo of Pojoaque Utility Board no longer than one (1) year shall retain the deposits. The deposits, with interest compounded at passbook rates, shall be credited to the individual customer's utility account balance at the end of the deposit period, providing that the customer's account is not delinquent and in arrears. Any remaining deposit funds will be returned to the customer.

(h) Enforcement; Penalties; Sanctions.

1. Department and Enforcement. The Pueblo of Pojoaque Utility Board is hereby authorized by the Tribal Council to collect established fees for service and to impose sanctions and penalties for non-payment. The Pueblo of Pojoaque Utility Board shall enforce its regulations, fee collections and provisions of this ordinance by shutting off

water service of any and all violators and delinquent bill-payers or imposing other penalties and sanctions as authorized.

2. Attachment of Customers' Property. The Pueblo of Pojoaque Utility Board shall not seek to attach customers' property, nor seek to have fines assessed by Tribal Court, except in limited cases of blatant or continued abuses or destruction of property.

3. Penalty Schedule. The Pueblo of Pojoaque Utility Board shall develop and adopt a penalty schedule which outline specific penalties, fines and assessments for violation and non-compliance with the provisions of this ordinance. The penalty schedule shall be reviewed for appropriateness annually by the Pueblo of Pojoaque Utility Board.

4. Sanctions Authorized. The following sanctions may be imposed by the Pueblo of Pojoaque Utility Board for failure of the customer to comply with any provisions of this ordinance or with any duly adopted regulation of the Pueblo of Pojoaque Utility Board:

A. Termination of service(s)

B. Assessment of penalties or late charges based on a penalty schedule adopted by regulation of the Pueblo of Pojoaque Utility Board

C. Assessment of damages resulting from the customer's non-compliance

D. Forfeiture of all or part of a deposit and any accumulated interest

E. Filling of a lien against the customer's property after the account is declared delinquent

F. Enforcing a lien by seeking judgment, and satisfaction from the customer's property from a court of competent jurisdiction

G. Filling suit for damages in a court of competent jurisdiction

H. Referring violations that may involve criminal conduct to the police or prosecutor

5. Sanctions Guidelines. The Pueblo of Pojoaque Utility Board shall use the following guidelines when considering the appropriate sanctions to be imposed in any given case:

A. Whether the sanction is required by this ordinance or other applicable law

B. Whether imposition of sanction is discretionary

C. The minimum sanction needed to effect compliance

D. The customer's past record of compliance or non-compliance, or good faith efforts to achieve compliance

E. The customer's statements or behavior indicating the likely success of a given sanction securing compliance

F. The effectiveness of similar sanctions in securing compliance in other cases

(i) Miscellaneous Provisions.

1. Validity, Severability. The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any part of this ordinance which can be given effect without such invalid part or parts.

2. Amendments. The Pueblo of Pojoaque Tribal Council has the power to amend this ordinance at any time. The Tribal Council shall act upon proposed amendments to this ordinance, submitted for action by the Pueblo of Pojoaque Utility Board, by approval or disapproval of such proposed amendments.

3. Suspension of Ordinance. No employee, officer, contractor or agent of the Pueblo of Pojoaque is authorized to suspend or alter any of the provisions of this ordinance without formal approval of the Pueblo of Pojoaque Tribal Council.

T-7 Solid Waste Management Ordinance

(a) Authority. As a federally recognized Tribe pursuant to the Indian Reorganization Act of June 18, 1934, and pursuant to the inherent sovereign tribal powers expressly delegated to the Regular Council, the Regular Council may establish justice, administer and protect Pueblo lands and property, preserve and protect the Pueblo self-government, and engage in activities that will promote the health, peace, morals, education, and welfare of the Pueblo and its Members and their families.

(b) Policy. The policy of the Pueblo is to create and enforce solid waste management regulations in order to protect the health, safety, welfare, resources, and environment of the Pueblo.

(c) Purpose. The purpose of the Solid Waste Management Ordinance is to:

1. Protect the health, safety, and welfare of Pueblo members and all other persons within the Reservation.

2. Manage, protect, and preserve the resources and environment of the Pueblo.

3. Protect the religious sites, historical and cultural values, and traditions of the Pueblo.

4. Protect the Reservation as a permanent Pueblo homeland, and the aboriginal character of the Reservation.

5. Prevent the pollution of air, water, and land, including contamination of the Pueblo's aquifers, ground waters, surface waters, drinking water supplies, and all other natural resources.

6. Regulate environmental activities under principles of inherent Pueblo sovereignty.

7. Maintain and improve the aesthetic appearance of the Pueblo.

8. Maintain compliance with the Federal Resource Conservation and Recovery Act of 1976.

(d) Applicability. The provisions and regulations in this Ordinance are for general application and shall apply throughout Pueblo lands.

(e) Effective Date. This Ordinance shall become effective upon approval by the Tribal Council.

(f) Definitions.

1. "Aquifer" means a geologic formation, group of formations or portions of a formation capable of yielding significant quantities of ground water to wells or springs.

2. "Asbestos waste" means a solid waste that contains more than 1 percent asbestos.

3. "Commercial hauler" means any person transporting solid waste for hire by whatever means for the purpose of transferring, processing, storing, or disposing of the solid waste in a solid waste facility, except that the term does not include an individual transporting solid waste generated on his residential or business premises for the purpose of disposing of it in a solid waste facility.

4. "Compost" means organic material that has undergone a controlled process of biological decomposition and pathogen reduction, and has been stabilized to a degree that the final product is potentially beneficial to plant growth and can be used as a soil amendment, growing medium amendment, or for other similar uses. Compost does not include final product that contains sewage sludge that fails to meet the requirements of 40 CFR 503.

5. "Composting" means the process by which biological decomposition of organic material is carried out under controlled conditions. The process stabilizes the organic fraction into a material which can be easily and safely stored, handled, and used in an environmentally acceptable manner.

6. "Composting facility" means a facility, other than a transformation facility, that is capable of providing biological stabilization of organic material.

7. “Facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

8. “Flood plain” means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by the 100 year flood. The 100 year flood has a one percent chance of recurring in any given year, or a flood of magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

9. “Groundwater” means water below the land surface in a zone of saturation.

10. “Hauler” means any person transporting solid waste.

11. “Hazardous Waste” means any waste substance, material, smoke, gas, particulate matter, or combination thereof that:

A. Because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness, or pose a substantial present or potential hazard to human health, living organisms, or the environment when improperly handled, treated , stored, transported, or disposed of; or

B. Is specifically defined to be hazardous or toxic by the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, or the Resource Conservation and Recovery Act (RCRA) of 1976, or the Toxic Substance Control Act (TSCA) of 1796 as acts may be amended from time to time, and by any regulations promulgated there under, including but not limited to, any substance, material, smoke, gas, particulate matter, or combination thereof containing asbestos, petroleum or its byproducts, or polychlorinated biphenyls (PCBs).

12. “Infectious waste” means a solid waste that carries a probable risk of transmitting disease to humans or animals, and includes the following which shall be considered infectious waste:

A. cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stock of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines except for residue in emptied containers; and culture dishes, assemblies, and devices used to conduct diagnostic tests or to transfer, inoculate, and mix cultures;

B. human pathological wastes, including tissues, organs, and body parts that are removed during surgery, autopsy, other medical procedures, or laboratory procedures, but not including hair, or nails;

C. human and body fluid waste, including:

i. liquid waste human blood;

ii. blood products;

iii. items with human blood (caking, flaking, saturated or dripping);

iv. items with human blood, including serum, plasma, and other blood components, which were used or intended for use in patient care, specimen testing, or the development of biological products or pharmaceuticals;

v. intravenous bags that have been used for blood transfusions;

vi. items, including dialysate, that have been in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers;

vii. items contaminated by body fluids from persons at trauma scenes, during surgery, autopsy, other medical procedures, or laboratory procedures;

viii. specimens of blood products, and their containers; and

ix. other potentially infectious materials as defined by the U.S. Department of Labor occupational safety and health administration at 29 CFR 1910.1030(b), including the following body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

D. contaminated animal carcasses, body parts, blood, blood products, secretions, excretions, and bedding of animals that were known to have been exposed to zoonotic infectious agents or non-zoonotic human pathogens, including during research (including research in veterinary schools and hospitals), production of biologicals, or testing of pharmaceuticals;

E. discarded sharps, used or unused (unless in original packaging), generated at a facility, that have, or are likely to have, come in contact with infectious agents while involved in human or animal patient care, treatment, or research, including hypodermic needles, syringes, Pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, culture dishes, suture needles, slides, cover slips, and other broken or unbroken glass or plastic ware.

F. infectious waste does not include:

i. wastes generated in a household (except for infectious wastes generated by home health care professionals);

ii. soiled diapers that do not contain materials identified as infectious waste;

iii. body excretions such as feces and secretions such as nasal discharges, saliva, sputum, sweat, tears, urine, and vomitus;

iv. used or unused syringes that have not come into contact with human blood or other bodily fluids or infectious agents and do not have a needle attached.

13. "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal.

14. "Lateral expansion" means a horizontal expansion of the permitted waste boundaries of a landfill.

15. "Open burning" means the combustion of solid waste without:

A. Control of combustion air to maintain adequate temperature for efficient combustion;

B. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

C. Control of the emission of the combustion products.

16. "Open dump" means any facility or site on the Pueblo for the disposal of solid waste which is not an authorized landfill under the Pueblo of Pojoaque's Law and Order Code and is not in compliance with federal regulations pertaining to solid waste at 40 C.F.R. Parts 257 and 258.

17. "Person" means any individual, partnership, company, corporation, firm, association, trust, estate, the federal government and its agencies and instrumentalities, any state and its agencies and instrumentalities, any city, town, village, county, or municipal authority, and any Indian tribe and it agencies and instrumentalities, including the Pueblo of Pojoaque and its divisions, departments, programs, companies, and enterprises.

18. "Permit" is a written license issued under the authority of the Pueblo Government regulating the collection, transportation, treatment, and disposal of solid waste.

19. "Processing" means techniques to change the physical, chemical, biological, or pathological character or composition of solid waste, but does not include composting, transformation, grinding, or chipping of yard refuse, compaction, or incineration.

20. "Processing facility" means a facility where processing of solid waste occurs.

21. “Radioactive waste” means any garbage, refuse, sludge, and other discarded material, including solid liquid, semisolid, or contained gaseous material that must be managed for its radioactive content.

22. “Recyclable materials” means materials that would otherwise become solid waste if not recycled and that can be collected, separated, processed, reclaimed, or composted and placed in use in the form of raw materials, products or densified-refuse-derived fuels.

23. “Recycling" means any process by which recyclable materials are collected, separated, processed, reclaimed, or composted and reused or returned to use in the form of raw materials or products.

24. “Recycling facility” means a facility that collects, transfers, or processes recyclable materials for recycling.

25. “Reservation or Pueblo Lands” means all lands subject to the jurisdiction of the Pueblo, including all lands within the exterior boundaries of the Pueblo grant, regardless of whether the lands are owned in fee, held in trust by the United States for the Pueblo, or otherwise held.

26. “Resource Conservation and Recovery Act (RCRA)” means the Federal Act passed by the U.S. Congress, as amended. The Hazardous and Solid Waste Amendments of 1984 (HSWA) both expanded the scope of RCRA and increased the level of detail in many of its provisions.

27. “Rubbish” means a general term for solid waste, excluding food wastes and ashes, taken from residences, commercial establishments, and institutions.

28. “Saturated zone” means that part of the earth's crust in which all voids are filled with water.

29. “Shall” is mandatory; “may” is permissive.

30. “Sludge” means any solid, semisolid, or liquid waste generated from a tribal, municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.

31. “Solid waste” means any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880),

or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

32. “Solid waste facility” means any system, facility, location, improvements on the land, structures or other appurtenances or methods used for processing, transformation, or disposal of solid waste, including landfill disposal facilities, transfer stations, transformation facilities, recycling facilities, resource recovery facilities, incinerators and other similar facilities not specified.

33. “Storage” means the interim containment of solid waste after generation and prior to collection for ultimate recovery or disposal.

34. “Transfer station*”* means a site at which solid wastes are concentrated for transport to a processing facility or land disposal site.

35. “Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting.

36. “Transformation Facility” means a facility used for the transformation of solid waste, but does not include air curtain incinerators or small animal crematoria.

37. “Variance” means an acceptable alternative that meets or exceeds the standards provided by this Ordinance.

38. “Vector” means a carrier that is capable of transmitting a pathogen from one organism to another.

39. “White goods” means large household appliances (such as ovens, washers, dryers, freezers, water heaters, and refrigerators) that have been discarded for disposal or recycling.

40. “Yard waste” means vegetative matter resulting from domestic landscaping, land maintenance, and land clearing operations.

(g) Prohibited Acts. No person shall:

1. Dispose of any solid waste in a place other than a facility which is in compliance with this Ordinance and other applicable laws.

2. Store, process, or dispose of solid waste except by means that are in compliance with this Ordinance or approved by the Pueblo of Pojoaque Environment Department (Environment or Environment Department).

3. Burn any solid waste on Pueblo Lands, except for yard waste.

4. Process, recycle, transfer, transform, or dispose of hazardous, infectious, or radioactive waste at any solid waste facility.

5. Operate a solid waste collection system, transportation system, or facility without obtaining a permit from the Pueblo.

(h) Permits Required. Any person seeking to construct or operate a solid waste facility, operate a solid waste collection system, or operate a solid waste transportation system that transports solid waste to a facility on Pueblo lands shall first obtain a permit from the Environment Department. Any person who owns or operates an existing solid waste facility or solid waste collection system shall submit a permit application within six months of the effective date of this Ordinance.

(i) Collection and Transport of Solid Waste. Any person who commercially hauls solid waste or recyclable materials to a facility on Pueblo lands or provides solid waste or recyclable collection services on Pueblo lands shall be responsible for the satisfactory collection and transportation of all solid waste to a permitted facility. Vehicles used for the collection and transportation of solid waste or recyclable materials shall use covers or enclosures to prevent the solid waste or recyclable materials from blowing from the vehicle during collection and transportation, shall be cleaned at such times and in such manner as to prevent offensive odors and unsightliness, and shall be leak proof. If spillage should occur, the material shall immediately be picked up by the solid waste hauler and returned to the vehicle and the area properly cleaned.

Commercial haulers shall:

1. Collect and transport waste so as to prevent environmental, safety, and public health or welfare hazards and nuisances;

2. Utilize equipment that is designed, constructed and operated so as to be leak-proof and protective of human health and safety and the environment;

3. Cover or enclose the waste to prevent littering during transportation;

4. Keep collection and transportation equipment in a clean condition through the use of sufficient washings and cleanouts;

5. Only transport waste to a facility that is permitted under this Ordinance or that is authorized by another government;

6. Immediately clean up any solid waste spilled during collection or hauling operations;

7. Take reasonable measures to assure that unauthorized wastes are not accepted.

(j) General Operating Requirements for Transfer, Recycling, and Transformation Waste Facilities.

1. Types of Waste for Acceptance: Only residential and commercial waste shall be accepted at transfer, recycling and transformation stations. Hazardous, infectious, or radioactive waste will not be accepted.

2. Waste Characterization: The facility operator shall visually inspect all shipments of solid waste to determine if the waste is allowed at the facility for disposal, recycling, or transformation. If it is unacceptable waste, the operator shall indicate so to the person(s) delivering the materials. If upon discovery of the receipt of unauthorized waste the facility operator shall:

A. Notify Environment Department, the hauler, and the generator within 48 hours;

B. If needed, restrict the area from public access and from facility personnel; and

C. Assure proper cleanup, transport and disposal of the waste.

3. Operations Plan: The operator of a transfer, recycling, or transformation facility shall develop an operations plan that contains the following:

A. Name, address, and phone number of the person(s) operating the facility and having the authority to take corrective action in an emergency;

B. Facility mailing address;

C. Vicinity map showing access and service roads, residences, water wells, and location of all surface water bodies, and all manmade and natural features within a half-mile radius of the facility;

D. Site map showing property boundary;

E. Site map showing structures, areas designated for unloading, bailing, compacting, storage, and loading, including dimensions and elevations; and

F. A description of the facility's drainage system and water supply-wastewater systems.

4. Design and Operational Criteria: The facility shall be designed and operated according to the following:

A. The loading and unloading areas shall be adequate to facilitate the unobstructed movement of vehicles;

B. Solid waste handling shall be confined to the smallest practical area, and shall be supervised by competent operating personnel;

C. Safety measures shall include fencing and signage to limit unauthorized persons from access to the facility when the facility is closed;

D. The on-site roads shall be designed to accommodate traffic in a safe and efficient manner, and the road surface shall be suitable for heavy vehicles and the road base shall be capable of withstanding expected loads;

E. The road surface shall be passable in all weather conditions for transfer vehicles;

F. Signs shall be posted with the hours of operation, the types of solid waste accepted, prohibited wastes, and emergency telephone numbers of a responsible party;

G. Containers used for the storage of solid waste shall be leak-proof and manufactured of non-biodegradable material;

H. There shall be sufficient unloading areas to meet demands during peak periods;

I. The facility shall not be located in a floodplain, within 500 feet of a wetland, or within 200 feet of a watercourse;

J. The facility shall not be located within 250 feet of a permanent residence, institution, school, place of worship, or medical facility, that existed at the time the facility permit was submitted; and

K. The facility shall not be located within 500 feet of culturally and historically significant sites as determined by the Pueblo of Pojoaque Tribal Historic Preservation Officer;

L. Additional Transfer Station Criteria:

i. Store recyclable materials in a manner that does not create a nuisance, harbor vectors, or create a public health hazard, and remove recyclable materials in a timely manner; and

ii. Provide separate storage areas for bulky wastes, such as white goods, and appliances.

M. Additional Recycling Facility Criteria:

i. Provide sampling points for each process stream that do not interfere with normal facility operation;

ii. Provide for periodic wash-down or other cleanup of the facility;

iii. Store waste residues by means that prevent the material and containers from falling, leaking, blowing, and exposure to the weather;

iv. Store all materials that are physically or chemically incompatible in separate areas; and

v. store any material containers that have the potential of discharging any oils, polychlorinated biphenyls (PCB's), battery acid, battery alkalines, or other liquids in a restricted area identified by signs on a covered, substance-compatible, berm containment pad.

N. Additional Transformation Facility Criteria:

i. Control dust in the unloading and charging areas in such a manner as to prevent explosions and fugitive dust emissions;

ii. Conduct any recycling operations in a sanitary manner, which does not interfere with transformation operations and remove all recyclable materials, in a timely manner or store them so as not to create a nuisance, vector harborage, or public health hazard;

iii. Store any special wastes generated by the transformation facility in covered buildings, in covered leak-proof containers, or in tanks, which shall be labeled with a description of the contents and the date the wastes were placed in storage; and

iv. Provide sampling points for each process stream that do not interfere with normal facility operation.

5. Nuisance Conditions: Owners and operators of each solid waste facility shall operate the facility in a manner that does not cause a public nuisance or create a potential to public health, welfare, or the environment. This includes measures to collect, properly contain, and dispose of litter. The facility shall be operated so that noise, dust, and odors do not constitute a hazard to human health. The facility shall provide for effective vector control of flies, rodents, and other insects or vermin.

6. Fire Protection: Fire protection equipment shall be available at all times. A plan to prevent the spread of fire shall be prepared and kept in the facility.

7. Recordkeeping: Owners and operators of solid waste facilities shall make and maintain the following records:

A. An operating record during the active life of the facility which shall include:

i. A daily log of the approximate quantity of solid waste received, the number of receipts, the business name of any commercial hauler of solid waste for each load of solid waste if it can be reasonably obtained, the quantity of waste transported for off-site disposal and on-site processing, the quantity of

recyclables transported by type and the facility where the recyclables were transported; and

ii. A copy of the operating record for the current month and the previous twelve months, at a minimum, shall be kept on-site. After that time, it shall be kept in a place where it can be made available to the Environment Department.

B. Inspection reports, investigation reports of complaints, and compliance evaluations;

C. A copy of the operations plan and all contingency plans;

D. Job descriptions and training records for all personnel at the facility;

E. A copy of the permit application and a complete and current permit;

F. A copy of the financial assurance estimate and the financial assurance mechanism;

G. All monitoring and testing results; and

H. Plans for detection and identification of unauthorized waste.

8. Contingency Plan: Contingency plans specifying the procedures to be followed to handle the following situations shall be available to all solid waste facility employees:

A. Discovery of the receipt of unauthorized waste.

B. Contamination of surface or groundwater.

C. Nuisance conditions on-site.

D. Alternate solid waste handling system or procedures when the facility is inoperable for any reason.

9. Closure: Closure care plans are required of all solid waste facilities.

A. The owner or operator of the solid waste facility shall prepare a written closure plan that describes the steps necessary for closure care of the solid waste facility to comply with the closure requirements in this Ordinance.

B. Closure care plans are required in the application for a permit.

C. The owner or operator of the solid waste facility shall notify the Environment Department in writing of the intent to close at least 90 days before closure occurs.

D. Closure plans for new solid waste facilities shall be approved as part of the facility permit.

E. All closure care plans shall be approved by the Environment Department and may be subject to conditions.

F. The owner or operator shall submit a closure report to the Environment Department within 60 days after closure completion. The report shall include:

i. A summary of closure activities; and

ii. A certification that the closure of the solid waste facility has been completed and all conditions of the approved closure plan have been satisfied.

G. Closure requirements for solid waste facilities other than landfills:

i. Owners or operators of solid waste facilities shall comply with the following requirements:

a. Cleanup of the area;

b. Dismantling and removal of any improvements related to solid waste handling or disposal;

c. Removal of buildings;

d. Removal of fences;

e. Removal of roads;

f. Removal of equipment;

g. Testing of soils and surface and/or ground water for contamination; and

h. Any other conditions of the permit.

H. Post-closure inspection by the Environment Department will determine if owner and operator complied with all the requirements of closure and there is no evidence of contamination.

I. Financial Assurances

i. The owner or operator of a solid waste facility shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility ever requiring closure under this Ordinance. This includes disposing of the largest inventory of material and end product expected at the facility and to clean up and dispose of all solid waste or other materials that could potentially create a nuisance at the facility. The owner or operator shall

file a copy of the estimate with the proof of financial assurance with the Environment Department concurrently.

ii. The owner or operator shall establish a financial assurance mechanism to ensure that the funds necessary to meet the costs of closure will be available whenever they are needed. The allowed mechanisms are:

a. Trust fund;

b. Surety bond;

c. Irrevocable letter of credit;

d. Insurance.

iii. The owner and operator shall not dispose, process, or transform solid waste at a solid waste facility until the owner or operator has submitted appropriate financial assurance documentation to the Environment Department, and has received confirmation from the Environment Department that the financial assurance is approved.

(k) General Operating Requirements for Solid Waste Landfill Facilities. *RESERVED*

(l) Permit.

1. Application Requirements.

A. Any person seeking to commercially haul solid waste to a facility on Pueblo lands or provide solid waste or recyclable collection services on Pueblo lands shall file an application with the Environment Department which shall include:

i. The name, address, and telephone number of the operation for which the permit is sought;

ii. The anticipated start-up date, hours of operation, and days of collection or transport;

iii. A list of types of storage containers required for residences, commercial, institutional, and industrial establishments to be served;

iv. Certification that drivers, trailers and vehicles are, and will continue to be, properly licensed or registered;

v. The means of controlling and mitigating odors;

vi. The transport distance from the nearest and farthest points of collection to the solid waste facility where the waste will be disposed;

vii. The name and location of any transfer, recycling, storage, transformation facility, or solid waste disposal facility to be used;

viii. An outline of proposed training for drivers and crew to be able to differentiate between hazardous waste, infectious waste, radioactive waste, and other solid waste;

ix. Certification that the waste identification training program will be implemented;

x. A statement whether any of the owners or operators have been fined for violation of any environmental laws of any tribe, state, or the United States;

xi. A statement whether any of the owners or operators have had any permits or registrations revoked or permanently suspended for cause under the environmental laws of any tribe, state, or the United States.

B. Any person seeking to construct, operate, or modify a solid waste facility shall file an application with the Environment Department which shall:

i. Contain the name, address, and phone number of the property owner, and solid waste facility owner and operator;

ii. List the total acreage, legal description, and maps of the proposed facility site;

iii. Provide a description of the facility's water source, its location, and estimated monthly use;

iv. Provide a plot plan of all facilities and drawings of the existing or proposed facility;

v. Contain an operating plan for compliance with operational criteria, including:

a. The means for effective vector control of flies, rodents, and other insects or vermin;

b. The listing and description of the number, type, and size of equipment to be used at the proposed solid waste facility for transforming, disposing, processing, recovering, or diversion of solid wastes or recyclables;

c. A description of the proposed solid waste facility, including:

(1) the anticipated origin, composition, and weight or volume of solid waste and other materials that are projected to be received at the facility;

(2) the processes to be used at the facility;

(3) the daily operational methodology of the proposed process

(4) the loading rate, the expected life of the facility; and

(5) the design capacity through the expected life of the facility and through the permit life of the facility.

d. The anticipated start-up date of the facility;

e. The planned operating hours of the proposed facility;

f. The means for providing for dust control in the unloading areas;

g. The means for providing for litter control in the facility area; and

h. The plans for transportation to and from the facility, including:

(1) the size and approximate number of vehicles that will deliver waste to the facility daily;

(2) the anticipated routes that will be used by waste vehicles and the suitability of roads and bridges involved;

(3) measures for controlling litter, dust and noise caused by traffic; and

(4) other predicted impacts of traffic to and from the facility;

vi. Provide plans, if any, for diverting solid waste from the waste stream;

vii. Provide a plan for complying with record keeping requirements in this Ordinance; and

viii. Contain a closure care plan in compliance with this Ordinance.

2. Additional Permit Application Requirements for Processing Facilities and for Recycling Facilities that Accept Solid Waste that Accompanies the Recyclable Material. Any person seeking a permit for a processing facility or for a recycling facility that accepts solid waste shall submit the following information in addition to that required by the general application requirements for a solid waste facility permit:

A. A description of the survey and analysis process used to determine the characteristics of all solid waste expected to be accepted or processed;

B. Plans and elevations, drawn to scale, of all structures used for processing, storage, alternate storage, and disposal of waste materials;

C. A process description of the sampling capability and locations designed into the facility so the process stream can be safely sampled and analyzed;

D. A description of the methods to be employed for the containment or removal of residues and spills in a manner that protects the public health, welfare, safety and the environment; and

E. An operation and maintenance manual that addresses all of the operating requirements.

3. Additional Permit Application Requirements for Transformation Facilities. Any person seeking a permit for a transformation facility shall submit the following information in addition to that required by the general application requirements for a solid waste facility permit:

A. The composition of the waste to be received at the facility;

B. The method(s) to be used for the transformation process to convert the waste into a feedstock, including material separation and recovery systems;

C. If the transformation process is other than biological, a characterization of the feedstock used as the design basis of the facility that shows:

i. Composition by material type; and

ii. Physical and chemical properties, including moisture content, ash content, and higher heating value;

D. If the transformation is by means of a biological process, a characterization of the feedstock used as the design basis of the facility that shows:

i. Composition by material type;

ii. Physical and chemical properties, including moisture content and percent organic and inorganic matter;

iii. Process efficiency, as measured by conversion of volatile solids; and

iv. End products or residue.

E. The proposed location and method for disposal, storage or processing of liquid or solid residues and end products produced by operation of the facility;

F. The process for separation, storage and disposal of waste generated by the process, including the temporary storage of bulky wastes;

G. The minimum and maximum volumes of the types of material or solid waste to be stored prior to sale, reuse or disposal, and the minimum and maximum time that material or waste will be stored;

H. Facility plans and elevations, drawn to scale, and specifications including:

i. Equipment layout;

ii. The transformation unit, with feed area and residue removal;

iii. All conveyors, ramps and other devices used to move material to and through the facility;

iv. Control room and equipment; and

v. Pollution control equipment;

I. An operations and maintenance manual that includes:

i. Current policies and procedures;

ii. The operating requirements for the various stages of transformation; and

iii. All information that would enable supervisory and operating personnel, and persons evaluating the operation of the facility, to determine the sequence of operation, plans, diagrams, policies, procedures and legal requirements which must be followed for orderly and successful operations;

J. A description of the facility operation which includes:

i. A sequential description of the major components used for the treatment of the solid waste starting from its delivery at the facility and continuing through loading operations;

ii. Procedures for facility start-up, and scheduled and unscheduled shut downs;

iii. A description of potential safety hazards and methods of control, including, but not limited to, arrangements to detect explosion potential and equipment installed to minimize the impact of explosion; and

iv. A description of personnel safety equipment and protective gear, including, but not limited to, showers, eye wash, fire extinguishers, hoses, hard hats, safety goggles, hearing protection, and proposed personnel hygiene facilities;

K. An operations plan that includes all plant systems complete with process flow and instrumentation diagrams and heat and material balances; and

L. Residue testing methods and procedures.

4. Additional Permit Application Requirements for Transfer Stations. Any person seeking a permit for a transfer station shall submit the following information in addition to that required by the general application requirements for a solid waste facility permit:

A. Plans and elevations, drawn to scale, of all structures proposed to be used for handling and storage of solid waste and diversion of recyclables;

B. A site plan of the proposed facility, drawn to scale, indicating the location of:

i. storage, loading, and unloading areas;

ii. fencing and gates; and

iii. entrances, exits, and access roads.

C. Methods of collection, treatment, or disposal of waste water from the facility;

D. The frequency of solid waste and recyclables deposit and pick-up from the facility, method of transport, and destination;

E. Specific operational procedures, including traffic patterns and procedures for handling recyclables, white goods, bulky items, yard refuse; and

F. An operation and maintenance manual that addresses all of the operating requirements.

5. Additional Permit Application Requirements for Solid Waste Landfill Facilities. *RESERVED*

6. Permit Application Review. The applicant shall submit the permit application to the Environment Department for approval. The applicant shall submit a permit application review fee of one hundred dollars ($100.00) along with the application. Upon receipt of an application for a permit, the Environment Department shall review the application and will either approve or deny it within thirty working days. If the application is approved, the Environment Department will provide a written notice to the applicant, along with any conditions of the approval. If the application is denied, the Environment Department will provide a written notice of the denial.

7. Transfers. A permit may not be transferred.

8. Permit Issuance. The Environment Department shall issue a permit if the applicant demonstrates that the requirements of this Ordinance are met and that neither a hazard to public health, welfare, property, nor the environment result.

9. Permit Denial or Revocation. A permit may be denied or revoked by the Environment Department for:

A. Failure to comply with the terms or conditions of the permit;

B. Fraud, deceit, or submission of inaccurate qualification information in the application or during the permit issuance process;

C. Violation of this Ordinance;

D. A determination that the permitted activity endangers public health, welfare, or the environment; and

E. Failure of the owner or operator to demonstrate the knowledge and ability to operate a facility in accordance with this Ordinance.

(m) Inspections.

1. The Pueblo of Pojoaque Environment Department can inspect the premises of a solid waste facility to evaluate compliance with this Ordinance or to investigate a complaint.

2. The Pueblo of Pojoaque Environment Department may inspect any solid waste facility for the following conditions on a weekly basis:

A. Unauthorized wastes;

B. Safety hazards;

C. Harborage of vectors;

D. General maintenance;

E. Compliance with any part of this Ordinance; and

F. Independent inspections by the U.S. Environmental Protection Agency (EPA) or other Pueblo Departments will be on an as needed basis as deemed necessary by the Tribal Council.

(n) Enforcement.

1. The Pueblo Government shall be responsible for enforcing this Ordinance.

2. The Environment Department shall develop and adopt a penalty schedule which outlines specific penalties, fines, and assessments for violations and non-compliance with the provisions of this Ordinance. The penalty schedule shall be reviewed for appropriateness annually by the Environment Department.

(o) Severability. If any provision, section, subsection, sentence, clause, or phrase of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, the remainder shall not be affected.

Subpart U General Welfare

U-1 Drug and Alcohol Testing Policy for Persons Requesting or Receiving Assistance

(a) The Governor may order a drug or alcohol test of any applicant or recipient of financial assistance or social services.

(b) If the first drug/alcohol test is positive, the applicant/ recipient may request a second test, at their own expense, to ensure the validity and reliability of the first test. The second drug/ alcohol test must be requested and taken within an hour of receiving the result of the first drug/alcohol test.

(c) If the applicant/recipient tests positive for drug/alcohol use, they shall be subject to First Offense Penalties.

(d) First Offense Penalties are mandatory. First Offense Penalties include: At a minimum, the applicant/recipient shall be given one week leave without pay. After the one week, the applicant/recipient may again receive benefits, but for the three months from the time of the negative result, they are subject to random drug testing at the discretion of any Tribal Official. The applicant/recipient employee shall be responsible for the costs of all drug testing within the probationary period.

(e) Second Offense Penalties are mandatory. After a second offense, the applicant/recipient employment shall be terminated from receiving any benefits for one year. The applicant/recipient must submit to a test for illegal drugs or alcohol and test negative prior to regaining eligibility for financial assistance or social service programs.

(f) DUI convictions: At the discretion of a Tribal Official, any applicant/recipient convicted in any Court of the violation of Driving under the Influence may be subject to the First and Second Offense Penalties.

(g) Any applicant/recipient who is subject to the first or second offense penalties remains eligible for social service programs regarding rehabilitation and counseling for the substance abuse problem.

(h) Any person who is receiving financial assistance for educational purposes and who tests positive for drugs or alcohol shall:

1. Repay the Pueblo one-half of the last stipend payment that the recipient received (e.g., if the recipient receives a monthly stipend of $1,000, the recipient shall repay $500 to the Pueblo).

2. Take another drug/alcohol test prior to receiving any further education financial assistance. If the test is negative, they shall be eligible to receive educational financial assistance. However, if the test is positive, the recipient shall repay the Pueblo the total

amount of educational financial assistance that the recipient received for the current semester in which the recipient tests positive and they shall be ineligible to receive any educational financial assistance for one year from the date of the negative test result.

U-2 Liquor Control Act

(a) Definitions.

1. "Alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters of any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters:

A. "Spirituous liquors" means alcoholic beverages except fermented beverages such as wine, beer and ale;

B. "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

C. "Fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but does not include:

i. Wine that is sealed or capped by cork closure aged two years or more;

ii. Wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and has not been produced with the addition of wine spirits, brandy or alcohol; or

iii. Vermouth and sherry.

D. "Wine" includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products with or without the addition of sugar or other products that do not contain less than one half of one percent nor more than twenty-one percent alcohol by volume.

2. "Club" means any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of the Pueblo of Pojoaque with a membership of not less than twenty members who pay membership dues at the rate of not less than five dollars ($5.00) per year and who, under the constitution and bylaws of the club, have all voting rights and full membership privileges and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the Commission finds is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes.

3. "Commission" means the Pueblo of Pojoaque Alcoholic Beverage Commission.

4. “Dispenser” means any person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises.

5. “Micro brewer” means any person who produces less than five thousand (5,000) barrels of beer in a year.

6. “Minor” means any person under twenty-one (21) years of age.

7. “Person” means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, Pueblo-chartered corporation, or any other legal entity.

8. “Restaurant” means any establishment having a New Mexico resident as a proprietor or manager which is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and which has a dining room, a kitchen, and the employees necessary for preparing, cooking and serving meals; provided that “restaurant” does not include establishments serving only hamburgers, sandwiches, salads and other fast foods.

9. “Wholesaler” means any person holding a license issued under the Liquor Control Act who sells, offers for sale or possesses for the purposes of sale any alcoholic beverages for resale by the purchaser.

(b) Pueblo of Pojoaque Alcoholic Beverage Commission.

1. The Commission is composed of up to five voting members. All members shall be named by the Tribal Council to serve for terms to be decided by the Tribal Council. The Commission shall determine its officers and chairperson.

2. Commission members shall meet at the call of the chairperson. Members of the Commission shall be reimbursed for per diem and mileage and shall receive a monthly stipend in accordance with Pueblo of Pojoaque Tribal guidelines.

3. The Commission will be responsible for issuing licenses and determining the outcome of all matters relating to the use and sales of alcoholic beverages within land owned by the Pueblo of Pojoaque within the exterior boundaries of the Pueblo of Pojoaque. These decisions will be made in accordance with applicable federal and New Mexico laws.

4. It shall be the policy of the Commission that the sale, service and public consumption of alcoholic beverages within the exterior boundaries of the Pueblo of Pojoaque shall be licensed, regulated and controlled so as to protect the public health, safety and morals. Therefore, the Commission shall investigate the qualifications of the applicants for licenses

and shall investigate the premises for which any license is sought before the license is issued.

5. Any person to whom a license is issued shall be fully liable and accountable for the use of the license, including but not limited to liability for all violations of the Liquor Control Act.

6. All managers are responsible for acts relating to alcohol service within the scope of their employment or while performing alcohol-related duties in the conduct of business.

7. All fees collected by the Commission shall be placed in the General Operating Fund of the Pueblo of Pojoaque under the designation "Pueblo of Pojoaque Alcoholic Beverage Commission" or under such designation as the Pueblo of Pojoaque Financial Officer shall recommend.

8. The final decisions of the Commission may be appealed only to the Tribal Council.

9. The Commission is authorized to license any person within the boundaries of lands over which the Pueblo of Pojoaque has jurisdiction if the alcoholic beverages are purchased from New Mexico wholesalers.

(c) Regulations Concerning Alcoholic Beverages.

1. Compliance with Liquor Control Act.

A. The sale or the possession for the purpose of sale or offering for sale, manufacture or transportation of alcoholic beverages is hereby prohibited within the exterior boundaries of the Pueblo of Pojoaque except on the terms and conditions specified in the Liquor Control Act.

B. It is unlawful for any person to deliver any alcoholic beverages for resale within the exterior boundaries of the Pueblo of Pojoaque unless such person has complied with the laws of the Pueblo of Pojoaque and applicable laws of the State of New Mexico.

2. Alcoholic Beverages in Unlicensed Public Places. It is unlawful for any person to drink or consume alcoholic beverages or for any person who is the owner, proprietor, operator or agent of the owner, proprietor or operator to sell, serve, furnish or permit the drinking or consumption of alcoholic beverages in any public place or any public club, whether operated for profit or not, except in those establishments having a license to dispense alcoholic beverages.

(d) Regulations Concerning Minors.

1. Employment of Minors. It is unlawful for any licensee knowingly to employ any person under twenty-one (21) years of age in the sale and service of alcoholic beverages.

2. Selling or Giving Alcoholic Beverages to Minors.

A. It is unlawful for any club, retailer, dispenser or any other person to do any of the following:

i. Sell, serve or give any alcoholic beverages to a minor, or to permit a minor to consume alcoholic beverages on the licensed premises;

ii. Buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor;

iii. Deliver alcoholic beverages to a minor; or

iv. Aid or assist a minor to buy, procure or be served with alcoholic beverages.

B. It is unlawful for any minor to consume, buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic beverage in a licensed premise.

C. If any person not a minor deceives another person to believe that a minor is legally entitled to be sold, served or delivered alcoholic beverages, he and not the person deceived shall have committed an unlawful act.

D. It is unlawful for any person to give, loan, sell or deliver an identity card to a minor with the knowledge that the minor intends to use the identity for the purpose of procuring or attempting to procure any alcoholic beverages.

E. It is unlawful for minor employees to ring up and/or accept payment in liquor in licensed premises. All alcohol servers must wear a color-coded tag verifying LCC certification on their badge during business hours. Updated lists of certified alcohol servers shall be submitted to the Commission annually, with license renewal applications. Upon completion of alcohol server's training, certifications shall be forwarded to the Commission.

(e) Licenses and License Tax.

1. Licenses; Required Sales and Shipment. It is unlawful for any person, on his own behalf or as agent for another person, except a duly licensed wholesaler, directly or indirectly to sell or offer for sale or ship or transport into the exterior boundaries of the Pueblo of Pojoaque for resale any alcoholic beverages, except to a duly licensed retailer, dispenser, club, micro brewer, restaurant, canopy operator or special dispenser.

2. Application for Pueblo of Pojoaque License. Applications for a Pueblo of Pojoaque license under this Section shall be made to the Commission and shall contain such information as the Commission shall prescribe.

3. License Tax.

A. Annual license taxes on the privileges of persons holding liquor licenses issued by the Commission are imposed as follows:

i. Dispenser: an annual fee of one thousand two hundred and fifty dollars ($1,250);

ii. Retailer: an annual fee of one thousand two hundred and fifty dollars ($1,250);

iii. Club: an annual fee of one thousand two hundred and fifty dollars ($1,250);

iv. Micro brewer: an annual fee of one thousand two hundred and fifty dollars ($1,250);

v. Restaurant: an annual fee of one thousand dollars ($1,000); and

vi. Canopy: an annual fee of one thousand two hundred and fifty dollars ($1,250).

B. The licenses specified in Paragraph (A) of this Section shall be reissued annually on or about July 1 upon the payment of the annual license fee. Renewal applications and fees shall be submitted no later than May 1 for the proper review and evaluation. Application fees and/or licensing fees shall not be prorated. Any late renewal applications shall be subject to a late fee assessment of not more than ten percent (10%) of the liquor application fee.

4. Special Dispensers' Permits. Any person granted a special dispenser's permit for use within the exterior boundaries of the Pueblo of Pojoaque shall pay in advance a fee of fifty dollars ($50.00) per day for each day or fraction thereof that the permittee is to dispense alcoholic beverages. Any other fees will be determined by the Commission at the time of licensing. The Commission shall consider the proposed use, location and extent of the permit before determining the fees. Special dispenser's permits may only be issued in connection with a public celebration upon written approval from the Commission.

(f) Penalty. As provided in the Liquor Control Act, the failure to pay the license or permit fees imposed by this Act, in addition to any penalty imposed by the Pueblo of Pojoaque Tribal Court, shall be grounds for closing forthwith the place of business of any defaulting licensee.

U-3 Tribal Elections

(a) Eligibility of Candidates; Filing for Office.

1. Eligibility for Tribal Office. Any qualified enrolled member of the Pueblo of Pojoaque who is at least twenty-one (21) years of age, shall be eligible to seek and hold elective office.

2. Filing for Office. Each candidate must file a letter of intent with the Tribal Secretary no later than thirty (30) days prior to the election date. The letter of intent shall indicate which position the candidate is running for. No candidate may run for more than one (1) Tribal Official position in any given election.

(b) Qualifications for Candidacy. In order to be eligible to seek and hold elective office, candidates must:

1. Reside within the exterior boundaries of the Pueblo of Pojoaque for at least one year prior to the date the Candidate's letter of intent is filed (Proof of residency must be shown by two of the following: government issued ID, residential lease, land assignment, property deed, utility bill, bank statement, payroll stub, driver's license, or car registration, etc.);

2. For the election term of 2021-2022: Have attended at least seventy five percent (75%) of Regular Council meetings of the Pueblo for at least one year prior to the date the Candidate's letter of intent is filed. For all election terms thereafter: Have attended at least seventy five percent (75%) of Regular Council meetings of the Pueblo for at least two years prior to the date the Candidate's letter of intent is filed;

3. Be in good standing with both Regular and General Tribal Council;

4. Not be banned from the Pueblo;

5. Be in good financial standing, and not be in default, with the Pueblo;

6. Have no felony convictions within the past seven years of the date the Candidate's letter of intent is filed (Any other criminal history must be disclosed to General Council at the Candidates' platform forum);

7. Be mentally capable of performing the duties of the office sought; and

8. Be subject to and pass a drug test administered by the Pueblo's Gaming Commission prior to being declared an eligible candidate.

(c) Affidavit and Release Authorization. Candidates may be asked to sign an affidavit stating they meet the above listed requirements, and are a person of good character and sound judgment. All candidates must sign a release authorizing a criminal and financial background check. The criminal background check must include searches in tribal, state, and federal jurisdictions.

(d) Pending Criminal Matters. Candidates must disclose to the Tribal Council any pending criminal matters for which they are a party.

(e) Review of Background Check. If a background check reveals any felony convictions within the past seven years of the date the Candidate's letter of intent is filed, then the

Candidate cannot run for a position. The Gaming Commission will present any other criminal history to General Council at the Candidates' platform forum.

U-4 Tribal Historic Preservation

(a) Introduction. In an ongoing effort to protect the culturally unique identity of the people of the Pueblo of Pojoaque, the Tribal Council of the Pueblo of Pojoaque Finds it necessary to apply to the Secretary of the Interior to assume New Mexico State Historic Preservation Officer duties. The Pueblo of Pojoaque has developed a Pueblo of Pojoaque Tribal Historic Preservation Program Plan to aid in assuming New Mexico State Historic Preservation Officer duties on Pueblo land. The formation of the Tribal Historic Preservation Office shall supplement the established protection and conservation methods used by the Pueblo of Pojoaque regarding items including, but not limited to, artifacts, remains, and sites located within the exterior boundaries of the Pueblo of Pojoaque, lands held by the United States in trust for the benefit of the Pueblo of Pojoaque, and land owned by the Pueblo of Pojoaque.

(b) Background. Like many Pueblos in the State of New Mexico, the Pueblo of Pojoaque has had a turbulent history of invasion, assimilation, survival and prosperity. Pueblo people have had to discover their identity by looking at the past rather than by living their culture in the present. Pojoaque people feel it is necessary to protect what they know of their heritage as well as to protect their present well-being and future opportunities. The Pueblo has developed several programs over the past few years that demonstrate the Pojoaque people's will to flourish culturally and socially.

The Pueblo of Pojoaque's Tribal Council established the Poeh Cultural Center and Museum in 1988 as the first permanent tribally owned and operated mechanism for cultural preservation and revitalization within the eight Pueblo communities of the northern Rio Grande Valley. The Center emphasizes arts and cultures of all Pueblo People with focus on the Tewa-speaking Pueblos of Nambe, Pojoaque, San Ildefonso, San Juan, Santa Clara and Tesuque; and the Tiwa-speaking Pueblos of Picuris and Taos.

Since its inception, the Poeh Cultural Center and Museum's mission has been to support the future of the Pueblo people by: teaching the arts, collecting great works of art, and promoting public understanding of, and respect for, Pueblo history and culture. After sixteen years, the Center, its education initiative, Poeh Arts, and its Museum have taken that mission to heart and evolved into successful vehicles for artistic expression, both Native American and public education, and successful economic development strategies.

In keeping with the purpose of the Poeh Cultural Center and Museum, the Pueblo of Pojoaque has been active in repatriation and protection of cultural items and sites. A map indicating locations where cultural artifacts have been found on the Pueblo of Pojoaque is on file with the Poeh Cultural Center and Museum and may be disclosed only with the approval of the Executive Director of the Poeh Cultural Center and Museum.

The Pueblo of Pojoaque began to take a proactive lead in preservation in the early 1990s with the Nambe Highway project, which called for a disturbance of tracts of land that ran through Pojoaque Pueblo. In the years that followed, the Pueblo of Pojoaque has worked with federal agencies like the Bureau of Indian Affairs and Department of Energy to develop the land and commerce while maintaining a high standard of respect for land. The Pueblo of Pojoaque hopes to maintain this high standard through the creation of the Pueblo of Pojoaque Tribal Historic Preservation Office.

The Tribal Historic Preservation Office of the Pueblo of Pojoaque, shall hereafter be known as the Pueblo of Pojoaque Tribal Historic Preservation Office ("Preservation Office") and the Tribal Historic Preservation Officer shall be referred to in this Ordinance as "THPO".

(c) Tribal Historic Preservation Goals. The Pueblo of Pojoaque, in cooperation with the U.S. Department of the Interior and the State Historic Preservation Office of New Mexico, proposes to assume all of the duties and responsibilities of the New Mexico State Historic Preservation Officer, in accordance with subsection 101(d)(2), and as further referenced in subsections 101(b)(2) and (b)(3), of the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*, with respect to tribal land.

By assuming specific duties and responsibilities listed in the Pueblo of Pojoaque Tribal Historic Preservation Program, the Pueblo of Pojoaque intends to strengthen its own cultural and historic preservation program and to protect the cultural and historic interests of the surrounding area and Indian peoples. (A map showing surrounding areas of interest including Nambe, Cuyamungue, and Jaconita is on file with the THPO).

(d) State Historic Preservation Duties to be Assumed by Pueblo of Pojoaque Tribal Historic Preservation Officer.

It shall be the responsibility of the Tribal Historic Preservation Officer:

1. to administer the Pueblo of Pojoaque Tribal Historic Preservation Program through the Preservation Office under the administration of the Poeh Cultural Center and Museum;

2. to utilize any, all, or none of the entities within the Pueblo of Pojoaque Departments, Agencies, or Corporate Enterprises to fulfill the duties and purposes of the Preservation Office;

3. to direct and conduct surveys of all land within the exterior boundaries of the Pueblo of Pojoaque and historic properties and maintain inventories of such properties;

4. to identify, with the assistance of the Pueblo Cultural Advisor, and to nominate eligible properties to the National Register and otherwise to administer applications for listing historic properties on the National Register;

5. to prepare and implement a comprehensive Pueblo of Pojoaque Tribal Historic Preservation Plan with the aid of the Poeh Cultural Center and Museum, Pueblo of Pojoaque Legal Department, Pueblo of Pojoaque Environment Department, Pueblo of Pojoaque Realty Department, and other tribal departments and members as determined by the Tribal Historic Preservation Officer;

6. to administer the program of federal assistance for historic preservation within the Pueblo and surrounding areas of cultural importance to the Pueblo of Pojoaque;

7. to advise and assist, as appropriate, federal, Indian and state agencies and local governments in carrying out their historic preservation responsibilities;

8. to cooperate with the Secretary, the Advisory Council on Historic Preservation, and other federal and state agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

9. to provide information to the public, and solicit and consider comments from the public regarding the goals and activities of the Tribal Historic Preservation Program, through the use of the Poeh Cultural Center and Museum website and Pueblo of Pojoaque community memorandums;

10. to provide technical assistance to interested parties in historic preservation;

11. to cooperate with local, pueblo and other tribal governments in the development of tribal historic preservation programs and assist pueblo and tribal governments in becoming certified pursuant to subsection (c) of the National Historic Preservation Act as amended;

12. to consult with appropriate federal, Indian, state, and local agencies and governments, in accordance with National Historic Preservation Act section 106 as amended, regarding

A. federal undertakings that may affect historical properties; and

B. the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and

13. to advise and assist in the evaluation of proposals for rehabilitation projects within the exterior boundaries of the pueblo according to 36 C.F.R. 67 that may qualify for federal assistance.

(e) Pueblo of Pojoaque Land. The Pueblo of Pojoaque expressly retains all legislative, regulatory and adjudicatory jurisdiction over all lands within the exterior boundaries of the

Pueblo of Pojoaque; all lands held by the United States in trust for the benefit of the Pueblo of Pojoaque; and all lands owned by the Pueblo of Pojoaque.

The Pueblo of Pojoaque will cooperate with the State Historic Preservation Officer in cases where land within the exterior boundaries of the Pueblo of Pojoaque is owned by non-tribal members, in accordance with section 101(b)(2) and (b)(3) of the National Historic Preservation Act, as amended. A map showing tracts of Private Claim land is on file with the THPO.

(f) Office Staff and Organization.

1. The Tribal Historic Preservation Office shall be a part of the Poeh Cultural Center and Museum and under the direction of the Executive Director of the Poeh Cultural Center and Museum (hereafter "Executive Director").

2. Poeh Cultural Center and Museum staff shall act as staff for the Preservation Office unless such staff is otherwise appointed by the Executive Director.

3. The Museum Director ("Director") shall act as the Tribal Historic Preservation Officer responsible for carrying out the duties described in the Pueblo of Pojoaque Tribal Historic Preservation Program unless such other person is appointed by the Executive Director.

4. Working with the THPO will be the Pueblo Cultural Advisor who shall act on behalf of the Pueblo of Pojoaque as Tribal Historic Preservation Officer when it is not possible for the Museum Director to advise on culturally sensitive matters.

5. A Tribal Advisory Board will be available for consultation to both the Museum Director and the Pueblo Cultural Advisor regardless of whom is acting in the Tribal Historic Preservation Officer capacity.

6. The Executive Director has the authority to appoint or create other staff or positions as necessary.

(g) Consultation and Participation. In accordance with Section 101(d)(4)(c) of the National Historic Preservation Act, the Preservation Office shall provide for appropriate participation by:

1. Traditional Cultural Authorities in the form of the Pueblo Preservation Advisory Board and the Pueblo Cultural Advisor, as follows:

A. A Pueblo Preservation Advisory Board consisting of now fewer than three (3) tribal members and at least one (1) member of the War Chief staff is established in the Pojoaque Tribal Preservation Program. The board's duties include providing meaningful advice and guidance to the Tribal Historic Preservation Officer, reviewing

appropriate documentation submitted to National Park Service in connection with the Historic Preservation Fund, reviewing National Register nominations according to 36 CFR 60 where that tribe has assumed responsibility for that nomination process, and other appropriate duties as determined by the Executive Director.

B. Pueblo Cultural Advisor – The position of Pueblo Cultural Advisory is created to advise the THPO regarding matters of cultural sensitivity to the Pojoaque people. Because the THPO does not have to be a tribal member of the Pueblo of Pojoaque, the Pueblo Cultural Advisor is created to maintain participation of Tribal Members. The Pueblo Cultural Advisor does not have any of the responsibilities of the THPO unless he chooses to be involved. The Pueblo Cultural Advisor will be Pueblo of Pojoaque Tribal War Chief or some other person appointed to the Pueblo Cultural Advisory by the Pojoaque Tribal War Chief.

2. Representatives from other tribes whose tradition lands are under the jurisdiction of the Pueblo of Pojoaque, however, at this time there are no lands belonging to other tribes within the boundaries of the Pueblo of Pojoaque.

3. Interested Public: The THPO may inform the general public of projects on Pueblo property by posting an annual State of the Office report and announcements of approved project plans in the Tribal newsletter. The public shall also be notified of public hearings/consultations regarding specific projects to the extent they are required by federal law. The interested public may access information on collections and activities at the Poeh Cultural Center and Museum through the www.poehcenter.com website.

(h) Technical Assistance. The Pueblo of Pojoaque may request technical assistance from the National Park Service regarding administration of the THPO, the Advisory Council on Historic Preservation regarding the Section 106 process, and the New Mexico State Historic Preservation Office regarding state historical and archeological inventories and surveys.

(i) State Historic Preservation Officer and Secretary of the Interior Duties. It is the intent of the Pueblo of Pojoaque to assume all duties of the State Historic Preservation Officer that are applicable on tribal lands. However, any duties of the Secretary of the Interior not expressly assumed by the Pueblo in the Pueblo of Pojoaque Tribal Historic Preservation Program shall remain the duties of the appropriate officer in accordance with the National Historic Preservation Act, as amended.

(j) Current Cultural Policy. The Pueblo of Pojoaque does not currently allow permits for ground breaking or archeological digs. Economic development projects, on the other hand, are assessed through the Pueblo of Pojoaque Environment Department using an archeologist under contract from the University of New Mexico or other state agency or a private contractor. If the site proposed for economic development shows no signs of cultural or historic significance as determined by the acting Tribal Historic Preservation Officer, the project is allowed to

continue and the Pueblo of Pojoaque grants the necessary real estate agreements for the development project. For example, Right of Way Agreements are granted by the federal government with the consent of the Pueblo of Pojoaque. If the THPO determines that a project threatens cultural or historic artifacts or sites, the THPO or Executive Director shall have the authority in their sole discretion to issue a Stop Work Order, and work on the project shall immediately be terminated. If the project cannot be modified to reduce or mitigate harm to the property, the THPO or Executive Director in their sole discretion has the authority to terminate the project.

(k) Education and Training. The Tribal Historic Preservation Officer and staff of the Preservation Office involved in the management of cultural resources should be adequately trained in historic preservation, compliance requirements and use of the Tribal Historic Preservation Program.

The historic preservation staff shall also be responsible for the development of a tribal public education program on historic preservation. This program would provide information, techniques, processes, and requirements on all aspects of the National Historic Preservation Act, tribal historic preservation laws and programs, and historic preservation in general.

(l) Current Policies and Procedures of the Poeh Cultural Center and Museum.

1. Permanent Collection. The Permanent Collection of the Poeh Cultural Center and Museum contains those items that belong to the Poeh and remain permanently on Pueblo land or, by the sole discretion of the Executive Director, are exhibited off Pueblo land but ownership remains at all times in the Poeh.

2. Repatriated Objects.

A. The Pueblo of Pojoaque actively repatriates pertinent objects/artifacts from museums and other federal, state, and private institutions. It is the policy of the Poeh Cultural Center and Museum to store all repatriated objects in a non-visible cabinet. Repatriated objects are never to be viewed by the public nor are they ever to be exhibited.

B. Repatriated objects are catalogued but never photographed nor physically numbered.

C. Pueblo of Pojoaque members have access to repatriated or culturally sensitive materials through authorization of the Governor, Lt. Governor, or Executive Director. Non-Pueblo members do not have access to repatriated materials.

3. Permanency of Records. All file copies of catalog worksheets, documents, photographs, negatives and other materials related to cultural objects are to be of archival

quality and stored in archival conditions that meet currently accepted industry standards. The Curator of the Poeh Cultural Center and Museum is responsible for ensuring the proper safety and storage of the records.

4. Collections Inventory. A comprehensive physical inventory of the permanent collection is completed annually and a report of the inventory results is submitted to the Executive Director and Director.

5. Access to Collections.

A. Pueblo of Pojoaque Tribal Members have access to the permanent collection and to all collection records. Poeh Cultural Center and Museum Staff must accompany all tribal visitors into the collections and must assist with the access to all collection records.

B. Visitors from the general public must complete a "Collections Research Request Form." The Museum Director or Curator of the Poeh Cultural Center and Museum must approve the form.

C. Qualified researchers are given reasonable amount of access to the collections and assistance in their research needs keeping care and security of the collections a priority. The general public does not have access to repatriated or culturally sensitive objects.

6. General Conditions Governing Researchers are as follows:

A. All research projects require an appointment, approved in advance by the Director.

B. Access to the collections are at the sole discretion of the Executive Director, Director or Curator.

C. The Poeh Cultural Center and Museum reserves the right to request references from researchers.

D. Admittance of qualified researchers to the collection storage areas shall be at the sole discretion of the Executive Director, Director or Curator.

E. The Poeh Cultural Center and Museum may request copies of the notes taken on the collections, and copies of research papers and publications shall be provided free of charge to the Pueblo of Pojoaque.

F. Photography of collection items, or Xerox copies of collections records requires a written Permit to Reproduce, which must be completed by the researcher and approved by the Executive Director.

U-5 Photography on the Pueblo

(a) Any person who wishes to take or publish photographs or likenesses of any building, structure, or land located within the exterior boundaries of the Pueblo is required to obtain advance written authorization from the Pueblo of Pojoaque Governor or the War Chief.

(b) Any person who takes or publishes photographs or likenesses of any building, structure, or land located within the exterior boundaries of the Pueblo, without prior written authorization from the Governor or War Chief, shall be subject to a civil fine of up to ten thousand dollars ($10,000) per photograph or likeness per instance of publication.

Subpart V Taxation

V-1 Definitions

As used in this Ordinance, the following definitions will apply:

(a) "Assessment date" means each January 1st.

(b) "Business" means an activity engaged in for the purpose of direct or indirect benefit, gain, or advantage.

(c) "Buying" or "selling" means any transfer of property for consideration or any performance of service for consideration.

(d) "Commission" means the Pueblo of Pojoaque Tax Commission.

(e) "Council" means the Pueblo of Pojoaque Tribal Council.

(f) "Director" means the Tax Director of the Pueblo of Pojoaque.

(g) "Gross receipts" means the total amount of money or value of other consideration received from selling property within the exterior boundaries of the Pueblo of Pojoaque; from leasing property employed within the exterior boundaries of the Pueblo of Pojoaque, including but not limited to leasing of spaces for placement of mobile homes; from performing services within the exterior boundaries of the Pueblo of Pojoaque; and includes any receipts from sales of tangible property handled on consignment. Gross receipts excludes cash discounts allowed and taken, and excludes any gross receipts or sales tax imposed by the State of New Mexico or its political subdivisions, provided that such entity provides for a reciprocal exclusion for gross receipts taxes imposed by the Pueblo of Pojoaque.

(h) "Indian" means an individual who is a member, either enrolled or eligible for enrollment, of any Indian tribe recognized by the United States, or an organization composed exclusively of such individuals and organized under the laws of the Pueblo of Pojoaque.

(i) "Manufacture" means combine or process components or materials to increase their value for sale in the ordinary course of business, but does not include construction.

(j) "Owner" means any person who owns or enjoys a possessory interest, whether of the whole interest or less than whole.

(k) "Person" means any natural individual, company, partnership, firm, joint venture, association, club, corporation, estate, trust, or other entity of any kind.

(l) "Possessory interest" means the property rights within Tribal boundaries, whether obtained by a lease, right-of-way, easement, permit, other agreement, or occupancy (whether authorized or not).

(m)"Taxpayer" means a person who pays a tax, who is subject to and liable for a tax, or who has property that has been assessed for taxation purposes.

(n) "Utility" means any business or service that is engaged in regularly supplying some commodity or service of public consequence. Without limiting the generality of the foregoing, "utility" shall specifically include any business or service involving facilities relating to railroads, gas lines, telephone lines, cable television or other telecommunication lines, telegraph lines, electrical transmission lines, and water lines.

(o) "Cooperative Agreement" means any agreement entered into by the Commission on behalf of the Pueblo and the New Mexico Department of Taxation and Revenue pursuant to New Mexico law and this Tax Ordinance, providing for the administration of gross receipts taxes imposed by the State and the Pueblo on taxpayers situated within the exterior boundaries of the Pueblo, the equalization of gross receipts tax rates as to such taxpayers, and the sharing of gross receipts tax revenues derived from such taxpayers, and for other purposes.

(p) The term "the State" means the State of New Mexico.

V-2 Tax Commission Organization

(a) Creation of Commission. There is hereby created the Pueblo of Pojoaque Tax Commission, which shall be a governmental agency of the Pueblo of Pojoaque, possessing all of the powers, duties, rights, and functions hereinafter defined and as are now and may be hereinafter conferred by the tax laws of the Pueblo of Pojoaque.

(b) Manner of Appointment; Terms.

1. The Governor of the Pueblo of Pojoaque, with the advice and consent of the Tribal Council of the Pueblo of Pojoaque, shall appoint three (3) persons to serve as members of the Pueblo of Pojoaque Tax Commission, at least two of which shall be members of the Pueblo of Pojoaque.

2. The Governor shall designate staggered terms for the initial Commissioners as follows: One Commissioner shall serve for a term of one year; one Commissioner shall serve for a term of two years; and one Commissioner shall serve for a term of three years. Thereafter, all Commissioners shall serve for terms of three years or until their successors are duly appointed and qualified.

3. The Commission shall annually select a Chairman and a Secretary-Treasurer of the Commission from among its members.

4. Nothing herein shall prevent the Governor or any member of the Tribal Council from serving as a member of the Commission.

(c) Powers of the Commission; Duties; Limitations. The Commission shall have the power and authority in the enforcement of the tax laws of the Pueblo of Pojoaque to:

1. Employ a Tax Director of the Commission.

2. Promulgate such regulations as may be necessary and convenient for the administration of the tax laws of the Pueblo of Pojoaque.

3. Administer oaths, conduct hearings, and, by subpoena, compel the attendance of witnesses and the production of any books, records, and papers of any taxpayer for the purpose of enforcing the tax laws of the Pueblo of Pojoaque.

4. Examine under oath, either orally or in writing, any taxpayer or agents, or any other witness, for the purpose of enforcing the tax laws of the Pueblo of Pojoaque.

5. Hear and resolve appeals by taxpayers from actions of the Tax Director.

6. Recommend to the Council proposed amendments to the tax laws of the Pueblo of Pojoaque.

7. Approve and execute on behalf of the Pueblo any Cooperative Agreement authorized by New Mexico law and this Tax Ordinance.

8. Adjust the rate of the gross receipts tax imposed by this Ordinance, as to any taxpayer, as necessitated by any Cooperative Agreement that is in effect, so as to maintain parity between the rate imposed by this Tax Ordinance and the applicable gross receipts tax rate imposed by the State and the local New Mexico governmental entity having jurisdiction with respect to any such taxpayer.

9. Adopt by regulation such tax credits or other administrative provisions, not already provided by this Ordinance, as may be required by the terms of any Cooperative Agreement that is in effect or by any New Mexico law authorizing such agreements.

10. The Tax Commission shall have a minimum of one (1) meeting per month.

V-3 Pueblo of Pojoaque Tax Director

(a) Office of Tax Director Created. There is hereby created the office of the Pueblo of Pojoaque Tax Director ("Director"), possessing all powers, duties, rights, and functions hereinafter defined and as are now or may be hereinafter conferred by the tax laws of the Pueblo of Pojoaque.

(b) Manner of Appointment. The Director will be appointed by the Tax Commission and will serve under the direction of the Commission.

(c) Powers of the Director. The Director is charged with the administration and enforcement of the tax laws of the Pueblo of Pojoaque and, incidental thereto, shall have the power and authority to:

1. Assess, collect, and issue receipts for such taxes as are imposed by Ordinance and bring actions on behalf of the Pueblo in any appropriate court for the collection of tribal taxes, penalties, and interest, and for the enforcement of the tax laws of the Pueblo of Pojoaque.

2. Upon reasonable notice, examine and investigate the places of business, equipment, facilities, tangible personal property, books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, or, failing reasonable notice, in accordance with a subpoena issued by a court.

3. Compromise and settle claims arising from the application of the tax laws of the Pueblo of Pojoaque, in cases of legitimate controversy.

4. Prepare and make available to taxpayers, and others, standard forms to carry out the intent of Tribal tax laws and regulations, with the approval of the Commission.

5. Appear in proceedings before the Commission and present witnesses and evidence.

6. Administer oaths, conduct hearings, and, by subpoena, compel the attendance of witnesses and the production of any books, records, and papers of any taxpayer for the purpose of enforcing the tax laws of the Pueblo of Pojoaque.

7. Examine under oath, either orally or in writing, any taxpayer or agents, or any other witness, for the purpose of enforcing the tax laws of the Pueblo of Pojoaque.

8. Prepare such proposed regulations and amendments thereto as may be necessary and convenient for the enforcement of the tax laws of the Pueblo of Pojoaque.

9. Promulgate and enforce written rulings, interpretations, and notices as may be necessary and convenient to enforce the tax laws of the Pueblo of Pojoaque.

10. Exercise all other authority delegated by law, or as may be reasonably necessary in the administration or enforcement of the tax laws of the Pueblo of Pojoaque.

11. Provide to taxpayers, upon request, copies of rules, rulings, and regulations affecting the tax liability of such taxpayers.

12. Hire and fire personnel, incurring the expenses necessary to do so.

13. The Tax Director has the authority to prepare a budget for the Tax Department and present to Tribal Council for approval.

14. Negotiate with the New Mexico Department of Taxation and Revenue and present to the Commission for approval any form of Cooperative Agreement authorized by New Mexico law and this Tax Ordinance.

V-4 Bookkeeping and Records

(a) Bookkeeping. The Director shall establish and maintain the necessary financial records and books to account for all tax and other monies received using generally accepted accounting standards. Separate books will be maintained for each type of tax imposed.

(b) Taxpayer Records. The Director shall maintain accurate and complete records which reflect all taxes, penalties, and interest levied, due and paid, assessments, notices, and all other official transactions, communications, or actions by the Director, including responses, if any, from taxpayers. Such records shall be subject to audit at any time, upon the direction of the Commission or the Council.

(c) Confidentiality of Taxpayer Record. All records relating to taxpayers shall be confidential and not open to public inspection. A taxpayer will, however, be given access to records relating to his tax liability upon written request.

(d) Offices at Pueblo of Pojoaque. The Office of the Director will be located at the Tribal office building at the Pueblo of Pojoaque, New Mexico. The office will be open during normal working hours, or otherwise as posted, to accept payments, filings, reports, notices, and other communications or materials.

(e) Bonding. The Director must be covered by an adequate fidelity bond and may require that additional employees be covered by a similar bond.

V-5 Promulgation of Regulations

(a) Notice. The Commission may, but is not required to, publish proposed regulations in order to provide interested parties an opportunity to comment. Notice of the proposal will be published and the text made available as described hereinafter. The notice will invite written comments and give a deadline for submission not less than thirty (30) days after the first publication of notice. The Commission may, but is not obligated to, hold a public hearing, at which it will announce the time and place the oral testimony will be heard.

(b) Publication. Publication of a notice requires publication in the legal section of the local newspaper at least once a week for three (3) consecutive weeks and further requires a posting of the notice in the Pueblo of Pojoaque Tribal Administrative Services Office. The notice shall identify or otherwise describe the terms and conditions of the new regulations.

(c) Effective Date. A regulation will become effective forty-five (45) days after the first publication of notice or on the date otherwise specified therein.

(d) Available for Inspection. A copy of the regulations will be filed and made available for

public inspection at the Office of the Director at 2 Petroglyph Circle, Santa Fe, New Mexico 87506.

V-6 Collection Actions

The Director is authorized:

(a) To bring any necessary actions for the collection of any assessed and unpaid taxes, penalties, or interest and all costs and expenses incurred by the Commission in such collection, including but not limited to attorneys' fees and expenses. Such actions shall be civil in nature, and all penalties and interest shall be in the form of civil damages for non-payment. All other civil remedies provided for in Tribal law shall also be available to the Director.

(b) To bring any necessary actions, including forfeiture and cancellation of easements, rights-of-way, leases, and other rights against a taxpayer occupying Tribal lands, in order to enforce collection of taxes, penalties, and interest.

(c) To foreclose any lien imposed on any property for non-payment of taxes.

(d) To impose upon a non-complying taxpayer the Tax Commission's costs and expenses in enforcing the Ordinance against such taxpayer, including but not limited to attorneys' fees and expenses.

V-7 Formal Conference with Director

(a) Formal Conference. Any taxpayer may request a Formal Conference with the Director for a matter relating to assessment or valuation. The request must be in writing and must state with particularity the basis of the taxpayer's claim that the action of the Director is erroneous. Such written request must be filed with the Director not later than thirty (30) days from the assessment date (Utilities Tax) or from the date of receipt by taxpayer of an assessment. The Director must provide the taxpayer a Formal Conference within thirty (30) days of the date of the taxpayer's request. The taxpayer will be given not less than five (5) days notice of the time and place of the Formal Conference, and will be afforded the opportunity to present testimony and other evidence and to cross-examine witnesses. Formal rules of evidence will not apply; and the Director may accept such evidence as he finds relevant and credible. The Director will render a final decision, together with directions consistent therewith, not later than twenty (20) days following the conclusion of the Formal Conference.

(b) Payment Under Protest. A taxpayer objecting to an assessment may avoid the imposition of interest and penalty only by paying the tax due under protest within the prescribed time.

(c) No Involvement in Administration. Because the Commission will hear appeals by taxpayers from actions of the Tax Director, the Commission may not participate in Formal Conferences or other decisions of the Tax Director unless and until an appeal to the Commission is made.

V-8 Appeal to Commission

(a) Notice of Appeal. In the event a taxpayer is dissatisfied with the Director's decision resulting from the Formal Conference, the taxpayer may file with the Director a written Notice of Appeal to the Commission within ten (10) days following the Director's decision. The Notice of Appeal must state with particularity the basis of the taxpayer's claim that the decision of the Director is erroneous.

(b) Submission of Materials. The taxpayer may submit materials to the Commission, through the Director, within twenty (20) days from the date of the decision of the Director being appealed. The materials may include a record of the Formal Conference proceedings and a brief addressing the taxpayer's points on appeal. Upon receipt of the taxpayer's appeal materials, the Director shall have twenty (20) days within which to file a responsive brief. The Commission may, but is not required to, permit oral argument.

(c) Decision by Commission. The Commission will render a written decision without delay which decision shall be final. A copy of the decision will be delivered to the Director and the taxpayer.

(d) Standard of Review by Commission. The review by the Commission will be limited to the record of the Formal Conference. No new evidence may be submitted, except evidence alleging fraud in the proceedings below. The Commission will review the record and consider all submissions. If the Commission finds that there was substantial compliance by the Director with procedural requirements and that the action by the Director was supported by evidence and justified by law, it shall affirm the Director's decision. If it finds to the contrary, it may remand the matter to the Director, together with directions consistent with its decision.

V-9 Disposition of Tax Revenues; Refunds

(a) Tax Revenues. The Tax Director shall keep an accounting of all tax monies collected through enforcement of this Ordinance.

(b) Taxes Paid Under Protest. Taxes paid under protest will be deposited in an interest-bearing account separate from the general tax account(s).

(c) Refunds to Taxpayer. If the Director or Commission finds that a taxpayer is entitled to a refund, the Director shall make the refund payment, together with any interest earned thereon.

(d) Overpayments. If it shall appear subsequent to the receipt of tax proceeds by the Tribe that an amount of tax, penalty, or interest has been paid which was not due under the provisions of this Ordinance, whether as a result of a mistake of fact or of law, then such amount shall be credited against any tax due, or to become due, under this Ordinance from the person who made the overpayment, or such amount shall be refunded to such person, provided that a claim for refund shall be filed within three (3) years of the collection of the overpayment or said claim shall be forever barred.

V-10 Failure of Notice

The failure of the Director to mail, or a taxpayer to receive any notice, assessment, bill, or other communication will not affect the taxpayer's liability for a tax.

V-11 Fines and Interest

(a) Fines. Any person who files or furnishes any false information, who fails to file reports or to pay taxes in a timely manner, or who otherwise violates any of the provisions of this Ordinance, whether intentionally or negligently, shall pay a fine of five hundred dollars ($500) or five percent (5%) of the tax ultimately determined to be due for the period(s) for which the required report was not filed or the required payment not made, whichever is greater, for each such act in addition to any other fines or penalties prescribed by law.

(b) Interest. All taxes, fees, or other charges not paid when due shall bear interest from the date such taxes, fees, or charges become due until the date paid. Annual rates of interest shall be established in regulations. Interest shall be imposed on any unpaid amount of tax from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received.

V-12 Sovereign Immunity

Nothing herein shall be construed to waive, or otherwise deprive the Director or the Commission, or any Commission members, employees, or agents, of the rights and protection afforded by the sovereign immunity of the Pueblo of Pojoaque.

V-13 Confidentiality

No employee or former employee of the Pueblo shall reveal to any individual, other than another employee of the Pueblo, any information contained in the return of any taxpayer made pursuant to this Ordinance or any other information about any taxpayer acquired as a result of his or her employment by the Pueblo except:

(a) To authorized representatives of an Indian nation, Tribe or Pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, Tribe or Pueblo for the exchange of such information for tax purposes only; provided that the Indian nation, Tribe, or Pueblo has enacted a confidentiality law similar to this subsection;

(b) To an authorized representative of the State of New Mexico, provided that the State has entered into a written agreement with the Pueblo to use the information for tax purposes only and that the State has enacted a confidentiality law similar to this subsection;

(c) To a representative of the United States Treasury pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of such information;

(d) To the Tribal Court, a state court, or a federal court:

1. In response to an order thereof in an action relating to taxes in which the Director is a party and in which the information sought is material to the inquiry; or

2. In any action in which the Director is attempting to enforce this Ordinance or to collect a tax or in any matter in which the taxpayer has put his or her own liability for taxes at issue.

(e) To the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this paragraph shall be construed to require any employee to testify in a judicial proceeding except as provided hereinabove;

(f) Information obtained through the administration of any law not subject to administration and enforcement under this Ordinance to the extent that release of such information is not otherwise prohibited by law;

(g) In such manner that the information revealed is not identified as applicable to any individual taxpayer;

(h) To a purchaser of a business, the amount and basis of any unpaid assessment of tax for which the purchaser's seller is liable;

(i) To the Bureau of Indian Affairs for use in audits of rentals, royalties, fees, and other payments due to the Pueblo under land sale, land lease, or other land use contracts, if the Bureau of Indian Affairs agrees in writing that its employees shall be subject to the provisions of this Ordinance regarding confidentiality of information;

(j) The Director shall furnish, upon request by the child support enforcement bureau of any jurisdiction, the last known address with date of all names certified to the Director as being absent parents of children receiving public financial assistance; if the child support enforcement bureau agrees in writing that its personnel will use such information only for the purpose of enforcing the support liability of such absent parents and shall not use the information or disclose it for any other purpose; and

(k) The Director shall answer all inquiries concerning whether a person is or is not a registered taxpayer.

V-14 Utility Tax

(a) Imposition. There is hereby imposed and levied a basic ad valorem tax upon every possessory interest in utilities within the exterior boundaries of the Pueblo of Pojoaque. The tax is imposed and levied as of January 1, 1989. All owners of possessory interests in utilities within the exterior boundaries of the Pueblo of Pojoaque as of the assessment date each calendar year shall be liable for this tax.

(b) Rate. The tax rate shall be established by regulation. Until another rate is established, the tax rate shall be seven percent (7%).

(c) Utility Tax. The tax imposed by this Section shall be referred to as the "Utility Tax."

(d) Incidence of Tax. The incidence of the tax imposed by this Section shall be upon the owner of the possessory interest being taxed.

(e) Reporting Requirements. Each owner of a possessory interest in utilities shall file a report with the Director on a quarterly basis. Reports shall be filed before the 15th of the month following the close of each quarter (Reports due by: April 15th, July 15th, October 15th and January 15th). This report shall contain the following:

1. A description of the location of the possessory interest;

2. A description of any improvements and additions thereon;

3. A list of any related equipment kept within the exterior boundaries of the Pueblo; and

4. An itemized statement of the values of items 1, 2, and 3 above.

(f) Forms. The Director will provide forms for the use of the owner in complying with the reporting requirement.

V-15 Utility Tax – Valuation; Assessment and Payment; Extensions

(a) The value of a possessory interest shall be determined as provided in the Instructions for Reporting and Paying the Pueblo of Pojoaque Utility Tax, or by any method subsequently adopted by the Commission and approved by the Council.

(b) Liability. Owners of possessory interests in utilities shall be liable for the taxes, penalties, and interest assessed.

(c) Annual Assessment. Possessory interests in utilities shall be taxed annually as of the assessment date.

(d) Lien. Taxes assessed shall be a lien against the possessory interest in favor of the Pueblo of Pojoaque. Such lien shall arise as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances upon the property.

(e) Lien Filing. Any tax or penalty due from a taxpayer shall be a lien in favor of the Pueblo of Pojoaque upon all property or rights to property, whether real or personal, belonging to the taxpayer, and upon any funds held to the credit of the taxpayer by the Bureau of Indian Affairs. In order to preserve the lien against subsequent mortgage purchasers, or judgment creditors, for value and without notice of the lien, the Director may file with the Pueblo of Pojoaque

Tribal Court, with the Superintendent of the Northern Pueblos Agency, and with any other court or governmental entity charged with the duty of maintaining lien records a notice of said lien in such form as he shall elect. The Director shall prepare and keep a register of such liens, including but not limited to the name of each taxpayer, date of notice, and time received, amount, and when satisfied. A duplicate register may be maintained at the Northern Pueblos Agency.

(f) Distress Warrant. After notice of a lien has been filed as provided hereinabove, the Director may apply to the Pueblo of Pojoaque Tribal Court for a distress warrant which may direct the Pueblo of Pojoaque to collect the tax by seizure and sale of personal property of the taxpayer in accordance with the procedures provided for by the laws of the State of New Mexico. The tax so collected shall be remitted to the Director, but the Pueblo of Pojoaque Tribal Police shall be permitted to collect from the taxpayer and retain the compensation allowed under the laws of New Mexico. After such notice is filed, the Director is also authorized to apply to the Bureau of Indian affairs for the payment of the amount due, or such lesser amount as may be held to the credit of such party by the Bureau of Indian Affairs.

(g) Satisfaction. Upon payment of the tax and penalty, the Treasurer shall file with the Pueblo of Pojoaque Tribal Court, the Superintendent of the Northern Pueblos Agency, and any other applicable court or governmental entity, a satisfaction that shall be filed and recorded on the register(s) provided for hereinabove.

(h) Director's Authority. The Director shall have authority to assess unassessed possessory interests as of the date on which they should have been assessed and to redetermine incorrect or erroneous assessments.

(i) Extensions. An owner may request an extension of time within which to file a report or pay taxes. The request must be made to the Director in writing by the due date for the report or payment. The extension of time may be granted at the discretion of the Director.

V-16 Utility Tax – Utility Delivery

Repealed on October 22, 2015.

V-17 Utility Tax – Designation of Individual

Each owner must designate and provide to the Director the mailing address of a natural person for the purpose of notice and service of process.

V-18 Gross Receipts Tax

(a) Imposition; Rate. For the privilege of engaging in business, a Gross Receipts Tax is hereby imposed on any person engaging in business within the exterior boundaries of the Pueblo of Pojoaque, the rate of which shall be equal to the total rate of Gross Receipts Tax that is imposed on such person under New Mexico law, including any applicable local option portion (or that which would be imposed if such a person were subject to such a tax). The Commission shall

have the authority to adjust the tax rate imposed by the State and its political subdivisions as to each taxpayer. The current rate of the Gross Receipts Tax is eight point three percent (8.3%).

(b) Name of Tax. The tax imposed by this Chapter shall be referred to as the "Gross Receipts Tax."

(c) Incidence of Tax. The incidence of the tax imposed by this Chapter shall be on the seller of goods or services.

(d) Effective Date. The Gross Receipts Tax is effective upon execution of a Cooperative Agreement with the State pursuant to 1978 N.M.S.A. Section 9-11-12.

(e) Payment Due Date. The taxes imposed by this Chapter are to be paid on or before the twenty-fifth day of the month following the end of each calendar month in which the taxable event occurs. All non-exempt entities must file reports timely, without regard to liability for a tax. The computation of gross receipts on an annual basis will not be cumulative; tax liability for each month will be determined and imposed separately.

(f) Tax Credits. If on a taxable transaction taking place on Tribal land a Gross Receipts, sales or similar tax has been levied by the State and by the Pueblo, the taxpayer is entitled to a credit against the Pueblo's tax equal to the lesser of twenty-five percent (25%) of the tax imposed by the Pueblo on the receipts from the transaction or twenty-five percent (25%) of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transaction.

V-18-1 Gaming Device Receipts Tax

(a) Imposition; Name. An excise tax is imposed on the privilege of engaging in gaming activities within the jurisdiction of the Pueblo of Pojoaque. This tax shall be known as the "Gaming Device Tax".

(b) Rate. The Gaming Device Tax is an amount equal to (10) percent of the gross receipts of manufacturers and distributers from the sale, lease, or other transfer of gaming devices in or into the Pueblo, except receipts of a manufacturer from the sale, lease, or other transfer to a distributor for subsequent sale or lease may be excluded from gross receipts. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing, or otherwise transferring gaming devices.

(c) Exclusive Imposition. The Gaming Device Tax imposed is in lieu of other Pueblo gross receipts taxes on gross receipts attributable to gaming activities.

(d) Payment Due Date. The Gaming Device Tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs.

(e) Effective Date. The Gaming Device Tax became effective on November 21, 2019.

V-19 Gasoline Tax

(f) Imposition; Rate. For providing needed governmental services at the level necessary to support the increasing population and business operations on the Pueblo of Pojoaque, a Gasoline Tax of seventeen cents ($0.17) per gallon of gasoline purchased or received for retail sale within the exterior boundaries of the Pueblo of Pojoaque is hereby instituted.

(g) Name of Tax. The Tax imposed by this Chapter shall be entitled "Gasoline Tax."

(h) Effective Date. The Gasoline Tax was instituted on June 19, 1997 and became effective on October 1, 1997. The tax was amended on June 18, 1999.

V-20 Lodger's Tax

(a) Imposition; Rate. For providing needed governmental services at the level necessary to support the increasing population and business operations on the Pueblo of Pojoaque, a Lodger's Tax of six percent (6%) is hereby instituted.

(b) Name of Tax. The Tax imposed by this Chapter shall be entitled "Lodger's Tax."

(c) Effective Date. The Lodger's Tax was instituted on June 19, 1997 and became effective on October 1, 1997.

V-21 Cigarette Tax

(a) Imposition; Rate. For providing needed governmental services at the level necessary to support the increasing population and business operations on the Pueblo of Pojoaque, a Cigarette Tax of one dollar fifty cents ($1.50) per package of cigarettes purchased within the exterior boundaries of the Pueblo of Pojoaque is hereby instituted.

(b) Name of Tax. The Tax imposed by this Chapter shall be entitled "Cigarette Tax."

(c) Effective Date. The Cigarette Tax was instituted on June 19, 1997 and became effective on October 1, 1997 and was amended July 25, 2019.

V-22 Liquor Excise Tax

Repealed on October 3, 2006.

V-23 Gaming Tax

Waived as of October 26, 2017.

(a) Imposition; Rate. For providing essential governmental services, infrastructure, and social programs to Tribal Members, residents and visitors of the Pueblo of Pojoaque, a tax on gaming activities, in an amount comparable to amounts assessed by the State of New Mexico for comparable activities.

(b) Effective Date. The gaming tax shall be effective on July 1, 2015.

V-24 Exemptions

(a) Tax Exemptions can be given as incentives for prospective businesses, but must abide by the following rules:

1. Exemptions shall be awarded at the discretion and approval of the Pojoaque Pueblo Tax Commission;

2. All Tax Exemptions shall be documented in writing;

3. No Tax Exemption shall be longer than five (5) years; and

4. "Perpetual Waivers of Tax Liability" are prohibited.

Subpart W Civil Trespass Act

W-1 Scope and Purpose

It is the policy of the Pueblo of Pojoaque (hereinafter "Pueblo") to reserve consent for use of its land and to impose civil penalties for trespass on tribal lands. The purpose of this Act is to affect that policy.

W-2 Definitions

In this Code, unless otherwise requires:

(a) "Area Director" means the Bureau of Indian Affairs Area Director of the Southwest Region or her/his successor or designee.

(b) "BIA" means the Bureau of Indian Affairs of the United States Department of the Interior.

(c) "Driveway Land Assignment" (DLA) means the right granted by the Pueblo of Pojoaque for non-Pueblo owners of private land claims in fee simple to use or enter upon Pueblo of Pojoaque restricted fee or tribal trust lands for driveway ingress/egress.

(d) "Easement" means a non-possessory right, granted by the Pueblo of Pojoaque, to use land for a specific purpose, through a duly approved grant of easement of temporary or fixed

term approved by the Secretary of the Interior or his/her authorized representative, for restricted fee or tribal trust lands, under applicable federal law and regulations.

(e) "Governor" means the duly elected Governor of the Pueblo of Pojoaque or his or her successor or designee.

(f) "Land Use Permit" means the right granted by the Pueblo of Pojoaque to enter upon or use for permitted purposes, Pueblo of Pojoaque restricted fee or tribal trust lands. Land Use Permit includes sand and gravel and barrow material permits.

(g) "Lease" means any lease or agreement to allow the use of Pueblo of Pojoaque tribal lands, including business site leases, to any person, company or entity by the Pueblo of Pojoaque Tribal Council or its designated committee(s). If trust lands are leased the lease must be duly approved by the Secretary of the Interior or his/her authorized representative, under applicable federal law and regulations.

(h) "Notice of Trespass" means a formal written notification from the Pueblo of Pojoaque informing an individual, business, or utility they are prohibited from entering or must immediately leave, Pojoaque tribal lands.

(i) "Permit" means granting temporary, legal authorization to access tribal lands for a specific authorized purpose for a limited time.

(j) "Person" means any individual, group of individuals, corporation, partnership, or other entity.

(k) "Pueblo of Pojoaque Tribal Council" means the governing body of the Pueblo of Pojoaque.

(l) "Pueblo of Pojoaque tribal land" means any land or interest in land held in restricted fee or trust by the United States for the Pueblo of Pojoaque Tribe or its members.

(m) "Realty Director" means the Director of Pueblo of Pojoaque Realty or his/her successor or designee, whose duties and responsibilities encompass Pueblo and corporate matters.

(n) "Right of Way" (ROW) is an easement or legal right granted to pass over, under, or through restricted fee or tribal trust land for a specific, limited purpose such as construction, operation, and maintenance of infrastructure, such as pipelines, telecommunications, and electric lines. It is a nonpossessory interest requiring compensation at fair market value and authorization by the Tribe and the Secretary of the Interior.

(o) "Secretary" means the Secretary of the United States Department of the Interior.

(p) "Service Line Agreement" (SLA) means an agreement between a utility or other authorized occupant with the Pueblo of Pojoaque, to connect utilities from a main line to

a specific building on restricted fee or tribal trust lands, providing localized and limited access.

(q) "Trespass" means the unlawful, unconsented, or unauthorized entering over, under, or through, or remaining, use of, or encroachment upon Pueblo of Pojoaque restricted fee lands or tribal trust lands, including unauthorized uses under existing permits, ROW's, DLA's, or SLA's, and failure to remove improvements or materials from Tribal land at the expiration of valid permits, ROW's or DLA's, or SLA's.

(r) "Tribal Court" means the Pueblo of Pojoaque Tribal Court.

W-3 Implied Consent to Pueblo of Pojoaque Jurisdiction

Entry upon tribal land without permission from the Pueblo is prohibited. When permission is given, it is expressly conditioned upon the consent of the person to the jurisdiction of the Pueblo for purposes of enforcing this Act. Any person who enters tribal land shall be deemed to have given consent to the Pueblo of Pojoaque jurisdiction for purposes of enforcing this code.

W-4 Applicability

(a) Any person who trespasses on or makes unconsented use of Pueblo of Pojoaque tribal land shall be subject to the penalties and other enforcement actions set forth in this Act.

(b) The Civil Trespass Act does not apply to non-member spouses, significant others, or children of tribal members, provided they are accompanied by the tribal member spouse/parent, or those who have permission to reside on the Pueblo.

W-5 Prohibited Acts

No person shall, without written authorization of the Pueblo, Tribal Businesses, or the Bureau of Indian Affairs:

(a) Trespass upon, use, occupy, or construct improvements on tribal lands;

(b) Graze livestock on tribal lands;

(c) Remove, extract, use, consume, or destroy any mineral resources, cultural or archaeological goods, gravel, sand, soil, ash, vegetation, antlers, or hides of wild game;

(d) Use or occupy tribal land for more than ten (10) days after the cancellation or expiration of written authorization;

(e) Knowingly or willfully use tribal lands for commercial gain;

(f) Appropriate, alter, injure, or destroy any historical, pre-historical, archaeological, or paleontological resources on tribal lands;

(g) Take or attempt to take wildlife on tribal lands;

(h) Enter upon the real property of Pueblo of Pojoaque tribal members that is posted to prohibit trespassing, is fenced, or contains obvious outward signs of habitability without permission of the owner or owner's agent;

(i) As a non-tribal member, enter Tribal lands of the Pueblo of Pojoaque without first obtaining an access permit under the policies and Law and Order Code of the Pueblo of Pojoaque;

(j) Refuse to depart from or reenter tribal lands in violation of an order of exclusion issued by the Tribal Court as provided in the Law and Order Code, tribal Ordinances and Polices, or by the Governor or Police Department of the Pueblo of Pojoaque; or

(k) Collude, aid, or abet another person in the commission of an action prohibited by this Section.

W-6 Notice of Trespass

(a) Delivery of Notice. The Pueblo of Pojoaque Realty Department Director, Police Department, or Legal Department, shall serve, or cause to be served, a written Notice of Trespass on any person trespassing on Pueblo of Pojoaque tribal lands. The Notice shall be served in person or by certified U.S. mail to the last known address of the trespasser. The Notice shall identify the person who is trespassing, the location and date(s) of the trespass, the actions required to be taken by the trespasser in response to the Notice of the violation, and the civil penalties and other actions that may be assessed against the trespasser.

(b) Computation of Time for Trespass Period in Notice. The time period that a person is determined to have been in trespass shall begin on the date which is evidenced by the expiration of any previously granted written permission and the date that a Notice is issued shall be considered retroactive to the date upon which the trespass period began.

(c) Notice to Departments. The Realty Department Director or Police Department shall deliver, or cause to be delivered, a copy of the Notice of Trespass to the office of the Governor and any relevant committee or Department of the Pueblo.

W-7 Enforcement

If the trespass is not cured by the actions required in the Notice of Trespass pursuant to this Act within the time limits provided in the Notice, in addition to assessing penalties, the Realty Department Director or Tribal Council may commence or more of the following actions:

(a) Order the person trespassing on Pueblo of Pojoaque tribal land to cease all activities on tribal land;

(b) Enforce an order issued or seize and impound the trespasser's real or private property located on Pueblo of Pojoaque tribal lands;

(c) Have law enforcement block access to the property;

(d) Recommend to the Governor that he/she initiate exclusion proceedings against the trespasser;

(e) Recommend that legal counsel for the Pueblo file suit against the trespasser;

(f) Detain trespasser(s) and transfer their custody to federal or state authorities for prosecution;

(g) Initiate a lawsuit in state or federal court;

(h) Take such other action as is appropriate under applicable Pueblo or federal law.

W-8 Enforcement by the United States

The Realty Director may request the BIA Area Director to enforce applicable federal law and regulations governing trespass on Pueblo of Pojoaque restricted fee land or tribal trust land and the provisions of this Act, including any time subsequent to an enforcement action having been taken pursuant to 25 U.S.C. Section 169 et seq and this Act. Pursuant to the aforementioned federal regulations, enforcement by the BIA may include but is not limited to fines, damages, or federal litigation:

> If a grantee remains in possession after the expiration, termination, or cancellation of a right-of-way, and is not accessing the land to perform reclamation or other remaining grant obligations, we may treat the unauthorized possession as a trespass under applicable law and will communicate with the Indian landowners in making the determination whether to treat the unauthorized possession as a trespass. Unless the parties have notified us in writing that they are engaged in good faith negotiations to renew or obtain a new right-of-way, we may take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action. The holdover time will be charged against the new term. 25 U.S.C. §169.410.

W-9 Civil Fines and Damages

(a) In addition to any enforcement authorized by this Act, the Realty Director shall impose civil penalties on any person found trespassing on Pueblo of Pojoaque tribal lands, commencing on the first day of trespass as documented in the Notice of Trespass, and for each day the trespass continues, of not less than one hundred dollars

($100) a day, up to fifteen thousand dollars ($15,000). For trespass, civil fines will be calculated as follows:

1. Three times the value of the mineral or other resource removed, destroyed, or extracted;

2. The value, as established by Resolution of the Tribal Council, of any wildlife, fish or game taken by such a person;

3. Three times the value of the amount of damage committed;

4. Three times the consideration that would have been charged by the Pueblo for use of the tribal land during the period of trespass, in either Permit, ROW, DLA, SLA, or any other easement or encumbrance status.

(b) Fines and damages assessed pursuant to this Section shall be due and payable to the Pueblo of Pojoaque Tribe within ten (10) business days of service of Notice of Trespass. Failure to pay fines or damages timely is considered an additional violation of this Act and shall constitute grounds for exclusion from Pueblo of Pojoaque tribal lands.

W-10 Interest on Penalties

Interest on any delinquent payment of penalties shall accrue at the current prime rate plus five percent, up to 10% compounded monthly until paid. The interest shall be prorated daily from the due date until the date of receipt.

W-11 Deposit of Fines and Damages

Fines and damages collected under this Act shall be deposited in the Pueblo of Pojoaque General Fund.

W-12 Administrative Review by the Realty

(a) Any person who receives a Notice of Trespass pursuant to this Act may, within ten (10) business days of the date the Notice of Trespass is served may request that the Realty Director conduct a review of the Notice of Trespass. The demand for review shall state the legal basis for review and supporting facts.

(b) Issues on review to the Realty Director shall be limited to:

1. confirmation that the person subject to the Notice of Trespass is or is not in trespass;

2. whether proper notice and opportunity to cure were provided; and/or

3. whether the assessed fines conform to regulations and this Act.

(c) Filing of a timely demand for review shall stay any court action or payment of fines on that Notice brought by the Realty Director or the person subject to the Notice. Upon receiving a demand for review, the Realty Director shall conduct an internal review of the matter. The Director shall give due consideration to the materials submitted by the trespasser. The Director shall not be required to consider materials submitted by the person demanding the review that are not relevant to the issues presented and/or not within the provisions of this Act, as determined by the Director. If, after conducting the review, the Director is satisfied that the Notice of Trespass is proper, notification will be sent in writing within ten (10) business days. If the Director finds that the Notice of Trespass was not proper, written notification will be sent within ten (10) business days and the Realty Director shall request an immediate lifting of the stay of the court proceeding which will start the timeline for the due date of payment.

W-13 Appeal of Review to the Tribal Court

(a) A determination issued by the Realty Department Director pursuant to this Act may be appealed by the recipient to the Pueblo of Pojoaque Tribal Court within five (5) business days from the date of the determination, unless the trespass is on a ROW and the BIA is addressing the violation.

(b) The Pueblo of Pojoaque Tribal Court has exclusive subject matter and personal jurisdiction to hear actions brought pursuant to this Act. For ROW's, the Pueblo of Pojoaque Tribal Court has concurrent jurisdiction with the federal government. If the Court finds that a trespass has been committed or is ongoing, the Court shall have the power to order one or more of the following: enjoin trespassers on Pueblo of Pojoaque tribal land, enforce damages and/or fines assessed by the Realty Director pursuant to this Act, order removal of persons and property from Pueblo of Pojoaque tribal land, and provide any other appropriate relief, including, blocking access to Pueblo land, issuing a lis pendens on real property, or impounding personal property on Pueblo land. Orders for payment of civil fines and penalties shall be enforceable against the trespasser in the same manner as any other money judgment. The Tribal Court decision is final and not appealable.