

FILED

MAY 12 2010

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Randolph H. Barnhouse
DC Bar No. TX0071
Luebben Johnson & Barnhouse LLP
7424 4th Street NW
Los Ranchos de Albuquerque, New Mexico 87107
Telephone: (505) 842-6123
Facsimile: (505) 842-6124

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**YSLETA DEL SUR PUEBLO,
A federally recognized Indian Tribe,
119 S. Old Pueblo Rd.
El Paso, TX 79917**

Plaintiff,

v.

**NATIONAL INDIAN GAMING COMMISSION,
1441 L Street NW, Suite 9100
Washington, DC 20005**

Defendant.

Case: 1:10-cv-00760
Assigned To : Huvelle, Ellen S.
Assign. Date : 05/12/2010
Description: Admn Agency Review

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This is an action for declaratory and injunctive relief. Defendant National Indian Gaming Commission ("NIGC") has taken final agency action determining that plaintiff Ysleta del Sur Pueblo is not under NIGC jurisdiction. That decision violates the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("IGRA"), and the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, P.L. 100-89, 101 Stat. 666 (Aug. 18, 1987), 25 U.S.C. § 1300g ("Restoration Act").

Jurisdiction and Venue

2. This action arises under the United States Constitution; federal common law; the Restoration Act; IGRA; 28 U.S.C.S. §§ 2201 (2010) and 2202 (2006) (Declaratory Judgment Act); 5 U.S.C. § 702 (2006) (Administrative Procedures Act) and 28 U.S.C. § 1651 (2006) (All Writs Act). This Court has jurisdiction under 28 U.S.C. § 1331 (2006) (federal question), § 1337 (2006) (commerce and antitrust regulations), and § 1362 (Indian tribes) (2006). The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act. The Court has authority to award costs and attorneys' fees under 28 U.S.C. § 2412 (2006).

3. The National Indian Gaming Commission maintains its headquarters in Washington, D.C. Venue is proper in this district under 28 U.S.C. § 1391(e) (2006).

Parties

4. The Ysleta del Sur Pueblo ("plaintiff" or "Pueblo") is an Indian tribe recognized as having a government to government relationship with the United States pursuant to the Restoration Act.

5. The NIGC is an agency of the United States Government created to provide federal regulatory oversight over the gaming activities of federally recognized Indian tribes. 25 U.S.C. §§ 2702, 2704, 2706 (2006).

Facts and Allegations

6. As a federally recognized Indian tribe, the Pueblo has the authority to conduct gaming pursuant to the Restoration Act, IGRA, and federal common law.

7. Under the Restoration Act, the Pueblo is permitted to conduct all gaming activities except those “which are prohibited by the laws of the State of Texas.” 25 U.S.C. § 1300g-6(a) (2006).

8. Texas law allows bingo, horse racing, card games and other gaming activities.

9. Texas law allows sweepstakes activities.

10. The Speaking Rock Entertainment Center is an enterprise of the Ysleta del Sur Pueblo.

11. The Speaking Rock Entertainment Center is situated on federal Indian trust land that is beneficially owned by the Pueblo and was acquired by the United States in trust for the Pueblo pursuant to Title I of the Restoration Act.

12. The Pueblo conducts entertainment operations at its Speaking Rock Entertainment Center including sweepstakes activities, has in the past conducted gaming activities at its Speaking Rock Entertainment Center, and has a petition to conduct bingo pending before the United States District Court for the Western District of Texas.

13. The Pueblo has a bingo ordinance that has been approved by the NIGC, a copy of which is attached as Exhibit “A.”

14. NIGC has never withdrawn its approval of the Pueblo’s bingo ordinance.

15. NIGC’s scope of activities includes providing technical assistance and training for federally recognized Indian tribes on gaming regulatory issues.

16. On October 14, 2009, the Pueblo wrote to defendant requesting that NIGC provide training for the Pueblo’s gaming commission members. A copy of that letter is attached as Exhibit “B.”

17. On February 23, 2010, Penny Coleman, Acting General Counsel for NIGC, wrote to the Pueblo stating that NIGC “will not be able to comply with your request for training.” A copy of NIGC’s response is attached as Exhibit “C.”

18. NIGC denied the Pueblo’s request for training claiming that, because of the Pueblo’s Restoration Act, “[t]he Tribe is therefore not under NIGC jurisdiction.” Exhibit “C.”

19. NIGC’s determination that the Pueblo is “not under NIGC jurisdiction” is final agency action subject to review by this Court pursuant to the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*

20. NIGC’s refusal to provide oversight and training is a denial of the Pueblo’s rights under the Restoration Act and IGRA.

21. By reason of the wrongful and unlawful acts of the defendant, the Pueblo has suffered and continues to suffer irreparable injury.

22. Remedies available to the Pueblo at law are inadequate to compensate it for its injury.

23. Considering the balance of hardships between the Pueblo and NIGC, a remedy in equity is warranted.

24. The public interest would not be disserved by a permanent injunction.

25. The Pueblo’s claims present a genuine case or controversy between the Pueblo and the defendant; and the Pueblo requests that the Court adjudicate and declare the rights and obligations of the parties.

26. The Pueblo has no adequate remedy at law and will suffer irreparable harm unless the defendant is enjoined from wrongfully refusing to exercise jurisdiction over the Pueblo’s


gaming activities, and from refusing to provide the Pueblo and its gaming commission technical assistance and training.

Relief Requested

Plaintiff respectfully requests that the Court:

- (a) Declare that NIGC has violated IGRA and the Restoration Act by failing to exercise jurisdiction over gaming activities of the Pueblo;
- (b) Grant plaintiff injunctive relief compelling NIGC to exercise jurisdiction over gaming activities of the Pueblo;
- (c) Grant plaintiff injunctive relief compelling the defendant to provide plaintiff technical assistance and training;
- (c) Award plaintiff its attorneys' fees, costs and other allowable expenses; and
- (e) Award such other relief as the Court may deem just and proper.

May 6, 2010



Randolph H. Barnhouse ✓
DC Bar No. TX0071
Luebben Johnson & Barnhouse, LLP
7424 4th Street NW
Los Ranchos de Albuquerque, NM 87107
Telephone: (505) 842-6123
Facsimile: (505) 842-6124

*Attorneys for Plaintiff Ysleta del Sur
Pueblo*

**NATIONAL
INDIAN
GAMING
COMMISSION**

OCT 19 1993

Tom Diamond, Esq.
Diamond, Rash, Gordon & Jackson
300 E. Main Street
El Paso, Texas 79901

Dear Mr. Diamond:

This letter responds to your request to review and approve the tribal gaming ordinance submitted on July 22, 1993, and amended on October 5, 1993, for the Ysleta Del Sur Pueblo Tribe of El Paso, Texas. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

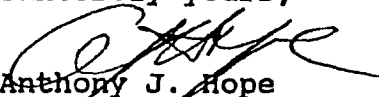
Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the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

It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

Thank you for submitting the ordinance of the Ysleta Del Sur Pueblo Tribe for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,


Anthony J. Hope
Chairman

cc: Julian Granillo, Governor



YSLETA DEL SUR PUEBLO

TRIBAL GAMING ORDINANCE RESOLUTION TC-27-93

WHEREAS, the Tribal Council (the "Council") of the Ysleta del Sur Pueblo (the "Pueblo") is the duly constituted traditional governing body of the Pueblo exercising all inherent governmental powers, fiscal authority and Tribal sovereignty as recognized in Section 101 and 104 of the Ysleta Del Sur Pueblo Restoration Act, 101, Stat. 666, Public Law 100-89 as codified in 25 USC § 1300g (the "Restoration Act"); and

WHEREAS, the Pueblo has operated from time immemorial as a Native American political sovereign without organic or written constitution, charter, or by-laws; and

WHEREAS, the Pueblo governs itself by oral tradition; and

WHEREAS, the civil and criminal law authority of the Pueblo is vested in the "Council" consisting of the Cacique, the Governor, the Lieutenant Governor and five (5) Councilmembers; and

WHEREAS, by unanimous vote, the Council determined to become involved in the operation of bingo games as such term is defined in the Indian Gaming Regulatory Act, Public Law 100-497 as codified in 25 USC § 2701 et. seq. (the "Gaming Regulatory Act"), and in the Regulations (the "Regulations") promulgated thereunder by the National Indian Gaming Commission (the "Commission"); and

WHEREAS, the Council had unanimously voted on the 6th day of May, 1992, to adopt and enact a Tribal Gaming Ordinance No. 00492 (the "Gaming Ordinance"), to which reference is here made and the terms thereof are incorporated herein for all purposes as if set forth in full as to all particulars; and

WHEREAS, the Council unanimously voted on the 16th day of October, 1992, to adopt and enact an amendment to said Tribal Bingo Ordinance No. 00492 (the "Bingo Ordinance, As Amended"), to which reference is here made and the terms thereof are incorporated herein for all purposes as if set forth in full as to all particulars; and

WHEREAS, the Council unanimously voted on the 15th day of April, 1993, to adopt and enact additional amendments to said Tribal Bingo Ordinance No. 00492 (the "Bingo Ordinance, As Amended"), to which reference is hereby made and the terms thereof are incorporated herein for all purposes as if set forth in full as to all particulars; and

WHEREAS, the Council unanimously voted on the 22nd day of July, 1993, to adopt and enact additional amendments to said Tribal Bingo Ordinance No. 00492 (the "Bingo Ordinance, As Amended"), to which reference is hereby made and the terms thereof are incorporated herein for all purposes as if set forth in full as to all particulars; and

WHEREAS, the "Guidelines to Govern the Review and Approval of Gaming Contracts and other Gaming Activities" dated as of March 5, 1992, and promulgated by the Assistant Secretary - Indian Affairs of the United States Department of the Interior (the "Guidelines") requires in Section B.1 thereof, that when an Indian Tribe adopts an ordinance concerning gaming matters it must include a resolution duly adopted by the governing body of the tribe with a citation to the section of the tribe's organic document which authorizes the action; and, when the tribe lacks a formal organic document, a tribal resolution adopted by the general council shall be required; and

WHEREAS, not possessing any organic documents as referred to in the Guidelines, the Council intends that this Resolution shall constitute the resolution required so that the Bingo Ordinance, As Amended, will meet and fulfill the requirements of the Gaming Regulatory Act and of the Regulations.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Pueblo as follows:

1. The preambles hereto shall be incorporated herein and made part of the Resolution.
2. That certain amendments to the Bingo Ordinance, As Amended, were adopted and enacted by the Council on the 22nd day of July, 1993.
3. That this Resolution shall constitute the citation evidencing the authority of the Council to enact and adopt the Bingo Ordinance, As Amended, as required by Section B.1 of the Guidelines.

ADOPTED this the 22nd day of July, 1993.

By: Julian Trancillo
Authorized Officer

Title: Tribal Governor

ATTEST:

By: [Signature]
Authorized Officer

Title: Tribal Secretary

**YSLETA DEL SUR PUEBLO
TRIBAL BINGO ORDINANCE**

NO. 00492

AMENDED ON

OCTOBER 16, 1992,

APRIL 15, 1993,

JULY 22, 1993,

AND

OCTOBER 5, 1993

**Ysleta Del Sur Pueblo
Bingo Ordinance
As Amended**

TABLE OF CONTENTS

Section 1.	<u>Title</u>	1
Section 2.	<u>Findings</u>	1
Section 3.	<u>Purposes</u>	2
General Provisions	.....	2
Section 4.	<u>Definitions</u>	2
Section 5.	<u>Gaming Authorized and Regulated</u>	9
Section 6.	<u>Use of Revenue from Class II and Class II</u> <u>Gaming Activities</u>	9
Section 7.	<u>Gaming Facilities</u>	10
Section 8.	<u>Persons Under the Age of Twenty-One (21).</u> <u>Employees Prohibited</u>	10
Section 9.	<u>Prizes: Assignments and Forfeiture</u>	10
Administration	.....	11
Section 10.	<u>Tigua Gaming Agency</u>	11
Section 11.	<u>Licensing</u>	13
Section 12.	<u>Background Investigations of Gaming Employees</u>	17
Class II Gaming	.....	20
Section 13.	<u>Exclusive Ownership by Pueblo</u>	20
Section 14.	<u>Management Contracts</u>	20
Section 15.	<u>Games Permitted</u>	21
Section 16.	<u>Bingo Game Cards</u>	21
Section 17.	<u>Player Limitation</u>	21
Section 18.	<u>Entry Prohibited</u>	21
Section 19.	<u>Hours of Operation; Notice to Commission</u>	21
Records and Audits	.....	22
Section 20.	<u>Records Maintenance</u>	22
Section 21.	<u>Independent Audits</u>	22
Violations	.....	23
Section 22.	<u>Crimes; Penalties</u>	23
Section 23.	<u>Civil Penalties</u>	24
Section 24.	<u>Enforcement</u>	25
Validity of Ordinance	.....	25
Section 25.	<u>Severability</u>	25
Section 26.	<u>Amendments</u>	25
Section 27.	<u>Effective Date of Ordinance</u>	25

YSLETA DEL SUR PUEBLO
TRIBAL BINGO ORDINANCE

NO. 00492

AS AMENDED

Pursuant to the authority vested in the Tribal Council (the "Council") as the duly constituted traditional governing body of the Ysleta Del Sur Pueblo (the "Pueblo") a federally recognized Indian Tribe, exercising all inherent governmental powers, fiscal authority and tribal sovereignty as recognized in the Ysleta Del Sur Pueblo Restoration Act (Public Law 100-89 as codified in 25 USC § 1300g, hereinafter the "Restoration Act"), and its lawful authority to provide for the health, safety, morale, welfare, tribal economic development and self-sufficiency of the Pueblo, the Council of the Pueblo hereby adopts the following amendment to Ordinance No. 00492 which was originally enacted on May 6, 1992, pursuant to the requirements of the Indian Gaming Regulatory Act (Public Law 100-497 as codified in 25 USC § 2701, et. seq., sometimes hereinafter the "Gaming Regulatory Act," or the "I.G.R.A."), for the purpose of regulating the conduct of Class II Gaming (as such term is defined in the Gaming Regulatory Act) on the Pueblo Tribal Lands (sometimes hereinafter referred to as "Indian Lands" or "Reservation"). Accordingly, Ordinance No. 00492 as adopted and enacted on May 6, 1992, amended October 16, 1992, amended April 15, 1993, amended July 22, 1993, and is amended this October 5, 1993, by substituting therefore the following:

Section 1. Title.

This Ordinance shall be known as the Ysleta Del Sur Pueblo Bingo Ordinance, As Amended, or the Bingo Ordinance, As Amended.

Section 2. Findings.

The Council of the Pueblo finds that:

1. The Ysleta Del Sur Pueblo Indian Tribe has the exclusive authority to operate, license, and regulate Class II Gaming activities on Pueblo Tribal Lands (or Indian Lands as such term is defined in the Restoration Act and the Gaming Regulatory Act) within the State of Texas; and

2. It is essential to the health, safety and general welfare of the Ysleta Del Sur Pueblo Indian Tribe and the visitors to its Tribal Lands that standards and regulations be promulgated to govern the conduct of Class II gaming activities on Pueblo Tribal Lands.

Section 3. Purposes.

The purpose of this Bingo Ordinance, As Amended, are to:

1. Provide standards and regulations governing the conduct of Class II gaming activities on Pueblo Tribal Lands;
2. Promote tribal economic development;
3. Enhance employment opportunities for tribal members;
4. Strengthen the economy of the Ysleta Del Sur Pueblo Indian Tribe; and,
5. Generate revenue for use in improving the health, education and general welfare of enrolled members of the Ysleta Del Sur Pueblo Indian Tribe.

I. General Provisions

Section 4. Definitions.

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

2. "Bingo Occasion" shall mean a single session or gathering at which a series of successive bingo games are played.

3. "Class I Gaming" means social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

4. "Class II Gaming" means all forms of gaming which are defined as Class II Gaming in the Indian Gaming Regulatory Act, P.L. 100-497, 25 USC § 2703(7)(A) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. § 502.3.

5. "Commission" means the National Indian Gaming Commission established

and existing pursuant to the Gaming Regulatory Act.

6. "Electronic, computer or other technological aid" shall mean certain Equipment including a device such as a computer, telephone, cable, television, satellite or bingo blower and which when used: (i) is not a game of chance but merely assists a player or the playing of the game; (ii) is readily distinguishable from the playing of a game of chance on an electronic facsimile, and, (iii) is operated according to applicable Federal Communications law.

7. "Enterprise" shall mean an economic entity authorized to conduct Class II Gaming Operations and related activities authorized on the Pueblo's Reservation pursuant to this Bingo Ordinance, as amended, and where applicable, a Management Contract.

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

9. "Game Card" and "Bingo game card" means a regular or special Bingo card.

10. "Games Similar to Bingo" means any game in which players play for prizes with cards bearing numbers or other designations, cover numbers or designations with objects when similar numbers or designations are drawn or electronically determined and win the game by being the first person to cover a designated pattern on such cards, provided that the game is not a house banking game (i.e. any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win).

11. "Gaming Employee" means any natural person employed in the operation or management of the Gaming Operation, whether employed by or contracted to the Pueblo or by any person or enterprise providing on or off-site services to the Pueblo within or without the Gaming Facility regarding any Class II gaming activity, including, but not limited to, Key Employees, Gaming Operation employees, Management Companies, and their Principals; and any other natural person whose employment duties require or authorize access to restricted areas of the Gaming Operation not otherwise opened to the public.

12. "Gaming Regulatory Act" or "I.G.R.A." means the Indian Gaming Regulatory Act, Public Law 100-497 as codified in 25 USC § 2701 et seq.

13. "Gross Revenue" means the total revenue from the conduct of the Pueblo Gaming Operation.

14. "Gaming Services" means the providing of any goods or services to the Pueblo directly in connection with the operation of Class II gaming in a Gaming Facility, including equipment, maintenance, or security services for the Gaming Facility.

15. "Indian" shall mean an individual who is listed on the Tribal roll of a Federally recognized Indian tribe.

16. "Instant Bingo" means a game of chance whereby the player purchases a card and removes paper slips, which act as concealing flaps, revealing numbers or symbols or numbers and letters, and on the reverse side of the card are printed the winning combination such that the player need only compare the sides to determine if and what they may have won.

17. "Key Employee" means:

(a) A person who performs one or more of the following functions:

(1) Bingo caller;

(2) Counting room supervisor;

(3) Chief of security;

(4) Custodian of gaming supplies or cash;

(5) Floor manager;

(6) Pit boss;

(7) Approver of credit; or

(8) Custodian of Equipment including persons with access to cash and accounting records;

(b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or,

(c) If not otherwise included, the four most highly compensated persons in the Gaming Operation.

18. "Lotto" means a game of chance with cards bearing numbers or other designations, in rows of 9, in which the player holding the card covers such numbers or designations when objects similarly numbered or designated are drawn or otherwise

randomly determined, in which the game is won by the first player to cover a predesignated arrangement on the card.

19. "Net Revenues" means the gross gaming revenues from the Pueblo Gaming Operations, less (a) amounts paid out as, or paid for, prizes; and (b) total gaming - related Operating Expenses, excluding management fees.

20. "Management Contract" means a management contract within the meaning of 25 U.S.C. § 2711.

21. "Non-Banking Card Games" means any card game in which two or more players play against each other and the players do not wager against the house. Non-banking card games played in conformity with State law regulating hours of play, wage, and pot limits are Class II gaming. All other non-banking card games are Class II games.

22. "Operating Expenses" shall mean expenses of the Enterprise, which expenses are necessary for the operation of the Enterprise and which include but are not necessarily limited to the following:

- (a) The payment of salaries, wages and benefit programs for employees engaged at the Enterprise;
- (b) Materials and supplies for the Enterprise;
- (c) Utilities;
- (d) Routine remodeling, repairs and maintenance of the Gaming Facility;
- (e) Interest on installment contract purchases by the Enterprise;
- (f) Insurance and bonding;
- (g) Advertising and marketing, including busing and transportation of employees to the Gaming Facility;
- (h) Professional fees;
- (i) Security costs;
- (j) Reasonable and necessary travel expenses for employees of the Pueblo, the Enterprise and of a management company pursuant to a Management Contract, subject to an approved budget;
- (k) Equipment which costs less than \$500 per item or unit;

- (l) Trash removal;
- (m) Costs of goods sold;
- (n) Cost depreciation as defined by Generally Accepted Accounting Principles ("GAAP");
- (o) Other expenses designated as Operating Expenses in the annual budget of the Enterprise;
- (p) Expenses specifically designated as Operating Expenses in a Management Contract and ordinarily considered as such in accordance with GAAP;
- (q) Such other expenses which are determined by an annual audit to be operating expenses; and
- (r) Any payments in lieu of taxes made to any governmental entity.

23. "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual cooperative, fraternal or nonprofit doing business within the Indian Lands. The Tribe is not within the definition of person.

24. "Player" means any person participating in Class II gaming activity, who is participating with the reasonable expectation of, or for the chance of, receiving a prize of some value.

25. "Principal" means with respect to any enterprise: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who own more than ten percent of the shares of the corporation, if a corporation; (v) each person other than a banking institution who has provided financing for the enterprise constituting more than ten percent of the total financing of the enterprise; and, (vi) any person or entity set forth and described in 25 CFR § 537.1.

26. "Primary management officials" means:

- (a) The person having management responsibility for a management contract;

- (b) Any person who has authority:
 - (1) to hire and fire employees; or,
 - (2) to set up working policy for the Gaming Operation; or,
- (c) The chief financial officer or other person who has financial management responsibility.

27. "Prize" means any U.S. currency, cash or other property or thing of value awarded to a player or players, or received by a player or players as a result of their participation in Class II gaming activity.

28. "Pueblo" or "Tribe" means the Ysleta Del Sur Pueblo Indian Tribe located within the counties of El Paso and Hudspeth in the State of Texas, being at its present location since time immemorial, being duly recognized by the Secretary of the Department of the Interior, and other agencies of the United States of America, and having special rights of self government, (all as set forth in the Ysleta Del Sur Pueblo Restoration Act, Public Law 199-89, 25 USC 1300g), and its authorized officials, agents and representatives.

29. "Pueblo Gaming Facility" or "Gaming Facility" means any location in which Class II gaming as authorized by this Bingo Ordinance is conducted on the Pueblo Tribal Lands.

30. "Pueblo Gaming Operation" or "Gaming Operation" means the Class II Gaming Operations conducted by the Pueblo on its Tribal Lands as part of the Enterprise.

31. "Pueblo Tribal Lands" or "Indian Lands" or "Ysleta Del Sur Pueblo Indian Lands" or "Reservation" means all lands within the limits of the Ysleta Del Sur Pueblo Indian Reservation; and any lands title to which is either held in trust by the United States for the benefit of the Ysleta Del Sur Pueblo Indian Tribe or individual Ysleta Del Sur Pueblo tribal member subject to restriction by the United States against alienation and over which the Pueblo exercises governmental power.

32. "Pueblo Tribal Member" shall mean an individual who is listed on the official Pueblo Tribal roll.

33. "Pull Tabs" means factory covered tickets which are purchased and opened by customers revealing a predetermined winning arrangement.

34. "Punch Board" means a small board that has many holes, each filled with a rolled up printed slip to be punched out upon payment of a player fee, in an effort to obtain a slip that entitles the player to a designated prize.

35. "Regular Bingo Card" means a board card issued to a person upon payment of admission fee which affords a person the opportunity to participate in all regular bingo games played at a bingo occasion.

36. "Regulations" shall mean Rules and Regulations promulgated from time to time by the Commission pursuant to the Gaming Regulatory Act, and Tribal Regulations, and this Bingo Ordinance, as amended, as the case may be.

37. "Reservation" means lands within El Paso and Hudspeth Counties, Texas:

- a. held by the Tribe on August 18, 1987;
- b. held in trust by the State or by the Texas Indian Commission for the benefit of the Tribe on such date;
- c. held in trust for the benefit of the Tribe by the Secretary under 25 USC 1300g-4(g)(2);
- d. subsequent to such date, acquired and held in trust by the Secretary for the benefit of the Tribe;
- e. the term "State" means the State of Texas; and,
- f. the term "Tribal Council" means the governing body of the Tribe as recognized by the Texas Indian Commission on August 18, 1987, and such tribal council's successors.

38. "Secretary" means the Secretary of the Department of the Interior.

39. "Special Bingo Card" means a disposable, specially marked bingo card which affords a person the opportunity to participate in a special bingo game for special prizes.

40. "Special Bingo Game" means any bingo game which is not a regular bingo game and which is played with special bingo cards for special prizes.

41. "State" means the State of Texas.

42. "Tigua Gaming Agency" means such agency of the Pueblo as the Pueblo may from time to time designate as the single Tribal agency responsible for regulatory oversight of Gaming Operations.

43. "Tip Jars" means a game of chance, wherein a person upon payment of a fee, is permitted to reach into, or tip a jar containing printed slips, and extract one slip in an effort to obtain a slip that entitles the player to a designated prize.

44. "Tribal Building Inspector" means the person appointed as Tribal Building Inspector, his qualified agent or if none, such other person as the Council designates or appoints, to perform the duties of a building inspector, including but not limited to, enforcement of applicable building, safety and health codes.

45. "Tribal Council" or "Council" means the Tribal Council of the Pueblo consisting of the Cacique, the Governor, the Lieutenant Governor, and five (5) Councilmembers, who are recognized as the governing body of the Pueblo, possessing plenary power over the people, land and property within the exterior boundaries of the Pueblo.

46. "Tribal Court" means the Ysleta Del Sur Pueblo Tribal Court.

Section 5. Gaming Authorized and Regulated.

Class II gaming is authorized on Indian lands. Class II gaming shall be regulated by the Pueblo through the Tigua Gaming Agency, and shall only be operated consistent with the provisions of the Bingo Ordinance, As Amended, and the Gaming Regulatory Act.

Section 6. Use of Net Revenue from Class II Gaming Activities.

1. Net Revenues from Class II Gaming activities shall be used only to:
 - a. fund tribal government operations or programs;
 - b. provide for the general welfare of the Tribe or Tribal members;
 - c. promote economic development within the Ysleta Del Sur Pueblo Indian Reservation;
 - d. fund operations of local tribal government agencies; and/ or
 - e. donate to charitable organizations, and
 - f. other lawful purposes.

Section 7. Gaming Facilities.

1. To ensure that the environment and the public safety and welfare are adequately protected, each Gaming Facility shall be constructed and maintained in compliance with the minimum standards of the 1988 edition of the Southern Standard Building Code, with local amendments.

2. Each Gaming Facility shall be subject to inspection to insure compliance, annually or on such basis as the Tribal Building inspector, or if none, Tribal Council, determines necessary and appropriate.

3. The Pueblo shall construct, maintain and operate each Gaming Facility in a manner that adequately protects the environment and the public health and safety.

Section 8. Persons Under the Age of Twenty-One (21), Employees Prohibited.

1. No person under the age of twenty-one (21) years shall be permitted to play any Class II game.

2. No person who is employed at a Gaming Facility may play any game conducted therein while on duty, except in the course of employment, on behalf of the employer, in which event employee status shall be clearly identifiable to the patron players.

Section 9. Prizes: Assignments and Forfeiture.

1. Non Assignable, exception.

The right of any person to a prize shall not be assignable except that payment of any prize may be made to the estate of a deceased prize winner or to a person pursuant to an order of the Tribal Court.

2. Forfeiture.

a. Any unclaimed prize of a Class II Gaming Operation shall be retained for ninety (90) days after the prize is available to be claimed. Any person who fails to claim a prize during such time shall forfeit all rights to the prize, and the amount of the prize shall be awarded to the Enterprise.

b. Any prize won by a person under the age of twenty-one (21) shall be forfeited as a violation of Section 8 of this Ordinance. Any such prize shall be awarded to the Enterprise, and the approximate consideration paid by such person shall be

refunded to such person.

II. Administration

Section 10. Tigua Gaming Agency.

1. Establishment and Composition.

- a. There is hereby created the Tigua Gaming Agency.
- b. The Tigua Gaming Agency shall be comprised of a Gaming Commissioner and four (4) members.

2. Qualifications and Appointment.

a. The Gaming Commissioner may be a person other than a tribal member, shall be appointed by the Tribal Council, and shall possess and demonstrate as minimum qualifications:

- (1) Knowledge and experience in the commercial gaming industry;
- (2) Familiarity with the Gaming Regulatory Act;
- (3) Experience in and knowledge of administration and administrative procedure.

b. The members shall be appointed by the Tribal Council. All members other than the Gaming Commissioner, shall be from among the Tribal membership.

c. Appointments of the Gaming Commissioner and members shall be for a period of four (4) years, except that of the initial members one shall be one year, one for two (2) years, one for three (3) years and one for four (4) years, which will result in staggered appointments and provide continuity within the Agency. The Gaming Commissioner and all members may be re-appointed for one or more successive terms.

d. No person shall be appointed to the Tigua Gaming Agency unless the Tribal Council is satisfied that:

- (1) He or she is a person of good character, honesty and integrity, who's prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of the Pueblo, its members or to the effective

regulation of Gaming Activities, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conducting of gaming or the carrying on of the business and financial arrangements incidental thereto; and,

(2) He or she has no interest in any private gaming activity on Pueblo Tribal Lands or any activity which may have interests in conflict with the Tribal Gaming Operations.

e. The Gaming Commissioner and members may be removed for good cause, after written notice and opportunity to be heard by the Tribal Council. Good cause shall exist when any condition occurs or is discovered which would exclude a person from appointment.

3. Duties and Powers.

The Gaming Commissioner shall administer the provisions of the Bingo Ordinance, As Amended, and shall have all powers necessary therefore. In exercise of its duties, the Tigua Gaming Agency shall:

a. Promulgate such rules and regulations as may be necessary and desirable for the proper implementation of the Bingo Ordinance, As Amended;

b. Identify and define the rules of play for each Class II game permitted;

c. License, supervise, inspect and oversee all Gaming Operations and persons employed in Gaming Operations conducted on Pueblo Tribal Lands;

d. Carry on a continuous study and investigation of Class II gaming on Pueblo Tribal Lands for the purpose of:

(1) Ascertaining any defects in or abuses of the standards and regulations in the Bingo Ordinance, As Amended, or applicable rules and regulations;

(2) Formulating recommendations for changes in the standards and regulations in the Bingo Ordinance, As Amended, and any and all applicable rules and regulations;

(3) Preventing abuses and evasions of the standards and regulations prescribed by the Bingo Ordinance, As Amended, and applicable rules.

e. Report to the Tribal Council on any matters related to gaming which are deemed by the Tigua Gaming Agency to constitute an emergency requiring immediate action;

f. Take such actions as are necessary and appropriate for violation(s) of the Bingo Ordinance, As Amended, applicable rules and/or regulations, including but not limited to license suspension, revocation, prosecution, referral for prosecution, or civil suit.

g. Employ such employees as are necessary to carry out the specific and general powers and duties of the Tigua Gaming Agency. The Tigua Gaming Agency shall comply with Tribal employment preference ordinance in effect.

h. Ensure that background investigations are conducted on the Primary Management Officials and Key Employees of the Gaming Operation and that oversight of such officials and their management is conducted on an on-going basis.

4. Compensation.

The Gaming Commissioner and members, and employees shall be reasonably compensated, as determined by the Tribal Council. The compensation shall be paid from the Pueblo's share of Net Revenues from the Enterprise.

Section 11. Licensing.

1. Authority to License.

The Tigua Gaming Agency shall have the sole and exclusive authority to license and regulate Class II gaming operations on Pueblo Tribal Lands which are now, or may hereafter, be permitted by federal law.

2. Types of Licenses to be Issued.

The Gaming Agency shall issue the following licenses for gaming on Pueblo Tribal Lands:

- a. Enterprise Management License
- b. Key Employment License
- c. General Employee License
- d. Other Licenses necessary and appropriate.

3. License Fees: Application Fees and Continuing Yearly Fees.

- a. Any person making application for a Pueblo gaming license pursuant

to this Gaming Ordinance shall submit his or her application, and required forms and information, as set forth by the Tigua Gaming Agency, pursuant to this Bingo Ordinance, As Amended, together with an application fee as follows:

- (1) Class II License fees:
 - (a) Enterprise Management License - \$1,000.00
 - (b) Key Employee License - \$200.00
 - (c) General Employee License - \$50.00
 - (d) Other - \$25.00

The Tigua Gaming Agency may waive fees in its discretion if a proponent is unable to pay fees.

b. A Licensee shall, at least sixty (60) days prior to the expiration of such license make application for renewal, as required by the Tigua Gaming Agency, and shall submit the application required forms and information together with a renewal fee equivalent to 75% of the above stated license fee applicable.

4. License Validity: Effective Period and Place.

a. Period. Tribal gaming licenses shall be valid and effective for a period of one year from the date of issue, unless same is sooner suspended, or revoked for cause after notice and hearing, pursuant to this Bingo Ordinance, As Amended.

b. Place.

A tribal gaming license shall be valid for any Enterprise operation located on the Pueblo's Tribal Lands.

5. License: Qualifications and Requirement.

a. General.

(1) An application to receive a license or to be found suitable to receive a license shall not be granted unless the Tigua Gaming Agency is satisfied, after review of a background investigation that such applicant is:

- (a) A person of good character, honesty and integrity;
- (b) A person whose prior activities, criminal record, if any,

reputation, habits and association do not pose a threat to the public interest of the Tribe, its members or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conducting of gaming or the carrying on of the business and financial arrangements incidental thereto; and

(c) In all other respects is qualified to be licensed or found suitable consistent with the declared policy of the Pueblo Gaming Operation.

(d) An application to receive a license or to be found suitable constitutes a request for a determination of the applicant's general character, integrity and ability to participate or engage in, or be associated with gaming. Any written or oral statement made in the course of an official proceeding of the Tigua Gaming Agency or the National Indian Gaming Commission established pursuant to 25 USC § 2704, by any member thereof or any witness testifying under oath which is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability or defamation constituting a ground for recovery in any civil action.

b. Primary Management Officials, Key and Other Employees; Identification.

(1) No person shall be employed in a Pueblo Gaming Operation on Pueblo Tribal Lands who:

(a) Has been convicted of or who has pled guilty or nolo contendere to any felony within ten (10) years, or has ever been convicted of or has ever plead nolo contendere to any gaming offense, or other offense involving moral turpitude.

(b) Is under the age of eighteen (18), except that, no person shall be employed as a primary management official or key employee, or in any position wherein the employee might be required to serve alcoholic beverages who is under the age of twenty-one (21).

(2) No person shall be employed as a primary management official or key employee in a Class II gaming activity who:

(a) Has not first applied for and obtained a tribal gaming license, pursuant to the Bingo Ordinance, As Amended, and, has been made the subject of a background investigation conducted by the Pueblo, its agents, or designee pursuant to the requirements of this Ordinance.

(b) Is ineligible for fidelity bonding or similar insurance covering employee dishonesty.

(3) Every person employed at a Gaming Facility operated on Pueblo Tribal lands shall wear an identification card issued by the Tigua Gaming Agency which conspicuously states the place of employment, the first name of the person and their position of employment. The card shall include a photo, first name and four digit identification number unique to the individual which shall also include a Pueblo seal or signature, and a date of expiration.

6. License Suspension and Revocation.

a. Suspension and Revocation.

(1) Any license issued by the Tigua Gaming Agency shall be suspended, without prior notice, if the National Indian Gaming Commission, after notification by the Tigua Gaming Agency of the issuance of a license, and after appropriate review, indicates that a primary management official, operator, or key employee does not meet the standards established and set forth herein, pursuant to 25 USC § 2710, and after notice and hearing may revoke such license.

(2) The Tigua Gaming Agency shall immediately suspend, and after notice and hearing, revoke the license of any primary management official or key or other employee, vendor or other gaming licensee of a Class II Gaming Operation who is or becomes ineligible to hold a license under this Ordinance or who violates any provision of this Ordinance or applicable federal law, including 25 USC §§ 1166, 1167, 1168 or 2701, et seq. or of 18 USC § 1663.

7. Revocation Notice.

a. The Tigua Gaming Agency shall promptly notify in writing any licensee whose license has been suspended or will be revoked and shall include in said notice:

(1) The effective date of suspension and/ or revocation;

(2) The reason(s) for the suspension and/ or revocation;

(3) The right of the licensee to appeal the suspension and/ or revocation to the Tribal Court within ten (10) days of the licensee's receipt of the revocation notice.

b. A copy of the suspension and/ or revocation notice shall be sent to the National Indian Gaming Commission.

8. Revocation Hearing.

a. A licensee may appeal the suspension and/ or revocation of his/ her license to the Tribal Court by sending a written notice of appeal of the suspension and/ or revocation to the Tribal Court and the Tigua Gaming Agency no later than ten (10) days after the licensee receives notice that his/ her license has been revoked. The notice of appeal shall clearly state the reason(s) why the licensee believes his/ her license should not be revoked.

b. Upon receipt of the notice of appeal of the license revocation, the Tribal Court shall schedule a revocation hearing to be conducted within twenty (20) days of receipt of the licensee's notice of appeal. Written notice of the time, date and place of the hearing shall be delivered to the licensee no later than five days before the scheduled date of the hearing.

c. The licensee, at their own cost, and the Tigua Gaming Agency may be represented by legal counsel at the revocation hearing. The licensee and the Tigua Gaming Agency may present witnesses and evidence presented by the opposing side.

d. The Tribal Court shall issue its decision no later than ten (10) working days following the revocation hearing. The decision of the Tribal Court shall be final and conclusive.

e. A copy of the Tribal Court's decision regarding the revocation of a license shall be sent to the Tigua Gaming Agency and National Indian Gaming Commission.

Section 12. Background Investigations of Gaming Employees

1. Background Investigations Prior to Employment.

a. The Pueblo, prior to hiring a prospective gaming employee (including Primary Management Officials and Key Employees), shall obtain sufficient information and identification from the applicant to permit a thorough background investigation of the applicant. The applicant shall provide to the Pueblo a written release authorizing the Pueblo or its agents, to conduct a background investigation. Prior to providing such release, Key Employees and Primary Management Officials shall be notified of their rights under the Privacy Act as specified in 25 CFR § 556.2 and as required by 25 CFR § 522.2 (b). The Tigua Gaming Agency shall be responsible for the performance of such background investigations. The information obtained shall include:

(1) Full name, including any aliases or other names which the applicant has used or has ever been known whether oral or written;

(2) Social security number(s);

(3) Date and place of birth;

(4) Citizenship of the applicant;

(5) Gender of the applicant;

(6) All languages spoken or written by the applicant;

(7) For the previous five (5) years an itemization or description of all:

(a) business and employment positions held;

(b) any ownership interests in businesses listed;

(c) business and residence addresses; and

(d) current or present drivers license number(s);

(8) Provide the names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under sub-section (7) (c), above;

(9) A current business and residence address and telephone number(s);

(10) A description of any current as well as previous business relationship with Indian tribes, including ownership interests in those businesses;

(11) A description of any existing and previous business relationships with the gaming industry generally, including interests in those businesses.

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

(13) A description of all criminal proceedings in which the applicant was or is currently involved, including the following:

(a) for each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition thereof;

(b) for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years as of the date of the application, the name and address of the court involved and the date and disposition thereof;

(c) for each criminal charge (excluding minor traffic charges) whether or not there is a connection, if such criminal charge is within ten (10) years of the date of application and is not otherwise listed pursuant to the provisions of subsection (a) and (b), above, the criminal charge, the name and address of the court involved and the date and disposition thereof.

(14) The name and address of any licensing or regulatory agency with which the applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(15) A current photograph;

(16) A set of fingerprints prepared by an authorized state, local, federal or tribal law enforcement agency; and,

(17) A statement as to any civil litigation involving fraud in which the applicant has been involved, and a statement as to any other civil litigation in which the applicant has been involved within ten (10) years of the date of application.

This information shall be provided in writing to meet the requirements of 25 CFR § 556.4 and § 537.1 as to background investigations.

b. The Pueblo may employ, on a probationary basis, any prospective gaming employee who represents, in writing, that he or she meets the standards set forth in this Section, until such time as the written report on the applicants' background investigation is completed, however, the Pueblo shall comply with the Tribal employment preference ordinance in effect.

c. The Pueblo shall not employ as a gaming employee, and shall terminate any probationary gaming employee, if the report on the applicant's background investigation finds that the applicant:

(1) has been convicted of or has plead nolo contendere to any felony within the previous ten (10) years or has ever been convicted of or has ever plead nolo contendere to any gaming offense;

(2) has knowingly and willfully provided materially important false statements or information on his employment application; or,

(3) has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits, and association pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

d. In the event of any dispute as to Subsection (c) above, the parties shall meet and in good faith attempt to resolve the differences. Until the matter is resolved the applicant shall not be employed as a gaming employee by the Pueblo.

2. Background Investigation of Gaming Employee During Employment. The Pueblo shall retain the right to conduct such additional background investigations of any Primary Management Official, Key Employees, or other gaming employee at any time during the term of that person's employment. Any gaming employee found to fall within the provision of Section c above shall be immediately suspended and shall be dismissed, after notice to the employee and hearing pursuant to Section 11(6), (7) and (8) of this Bingo Ordinance, as amended.

3. Background Investigation of any Principal. The Pueblo shall retain the right to conduct background investigations of any Principal of an entity which provides management services to the Pueblo or the Enterprise.

III. Class II Gaming

Section 13. Exclusive Ownership by Pueblo.

Class II gaming shall be owned and operated exclusively by the Pueblo, which shall have the sole proprietary interest in and responsibility for the conduct of any Gaming Operation.

Section 14. Management Contracts.

The Pueblo may enter into a management contract for the operation and management of Class II gaming activities. Each such contract must comply with the provisions of this Ordinance, other applicable provisions of tribal law (including, but not

limited to any tribal employment preference ordinance), and provisions of federal law (including, but not limited to, 25 USC §§ 2710, 2711.

Section 15. Games Permitted.

1. The Pueblo may conduct Bingo, Class II non-banking card games or a combination of Bingo and Class II non-banking card games.

2. A Bingo facility at each Bingo Occasion shall conduct regular Bingo games and may additionally conduct special Bingo games, and such other Class II games as are permitted by the Tigua Gaming Agency pursuant to the requirements of applicable law.

3. A schedule of the Class II games to be conducted must be conspicuously posted at each entrance to a Bingo Gaming Facility each week in which games will be conducted at least 24 hours prior to the start of the first game scheduled. The schedule must include a statement of the fee to play and the prizes offered for each game.

Section 16. Bingo Game Cards.

The Tigua Gaming Agency shall provide the game cards to be used for each Bingo game conducted.

Section 17. Player Limitation.

The number of persons permitted to play any Class II game shall be determined by the Tigua Gaming Agency, except that:

1. the number of people permitted in the Bingo Gaming Facility or in any room in the Facility shall not exceed the limitation of the number permissible under the applicable fire, building or other safety codes or standards.

2. the number of people permitted to play any bingo game shall not exceed the number of chairs available in the room(s) in which the game is being played.

Section 18. Entry Prohibited.

No person may enter any room in which a bingo game is being played unless the person is a player, except Gaming Facility employees and persons present by authority of the Tigua Gaming Agency, for purposes of inspection or regulatory duties.

Section 19. Hours of Operation; Approval by Tigua Gaming Agency.

Class II gaming may be conducted twenty-four (24) hours a day, seven days a week, subject to approval by the Tigua Gaming Agency.

IV. Records and Audits

Section 20. Records Maintenance.

1. Each Gaming Facility administered by the Tigua Gaming Agency shall maintain accurate and up-to-date records for each gaming activity conducted.

Records shall include records of:

- a. all financial transactions;
- b. all gaming machine testing, malfunctions, maintenance and repairs;
- c. personnel;
- d. complaints of patrons;
- e. facility in-house investigations of any kind;
- f. incidents and accidents;
- g. actions by the Tigua Gaming Agency against players or Gaming Facility visitors;
- h. actions by Tigua Gaming Agency against or in reprimand of employees.

Section 21. Independent Audits.

1. Gaming Activities Conducted by the Pueblo.

The Tigua Gaming Agency shall require, and the Tribal Council shall cause, an audit to be conducted each year of all Class II Gaming Operations conducted on Indian Lands. Such audit(s) shall be conducted by an independent auditing firm, selected at the sole discretion of the Tribal Council, or by the Tigua Gaming Agency on its behalf. However, nothing in this sub-paragraph shall prohibit the annual audit of tribal gaming activities from being encompassed within the Pueblo's existing audit system.

2. Contracts for Supplies, Services or Concessions.

Each contract for supplies, services, or concessions with a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to Class II gaming activity shall be subject to the independent audit required by subparagraph 1, above.

3. Annual Audit Report to be Provided to Commission.

The Tigua Gaming Agency shall furnish a copy of each annual gaming activities outside audit to the Commission.

V. Violations

Section 22. Crimes; Penalties.

1. It shall be unlawful for any person to:

a. Operate or participate in gaming on Indian Lands in violation of the provision of this Bingo Ordinance, As Amended, or in violation of rules and/ or regulations promulgated pursuant to this Bingo Ordinance, As Amended;

b. Knowingly make a false statement in an application for employment with a Pueblo Gaming Operation on Pueblo Tribal Lands;

c. Bribe or attempt to bribe, or unduly influence or attempt to unduly influence, any person who operates, conducts, assists, or is otherwise employed in a Pueblo Gaming Operation located on Pueblo Tribal Lands.

d. Alter or misrepresent the outcome or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players.

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

f. Claim, collect or take or attempt to claim, collect, or take, money or anything of value in or from a gambling game, with intent to defraud without having made a wager thereon or to claim, collect, or take an amount greater than the amount won.

2. Any person who willfully or knowingly violates any provision of this Ordinance or any rule or regulation authorized thereunder, shall be guilty of a criminal offense punishable by a fine not to exceed five hundred dollars (\$500.00) for each violation or for each day the violation continues or by imprisonment for not more than six (6) months or both.

3. Any person who willfully and knowingly violates any provision of this Ordinance or any rule or regulation authorized thereunder may have the equipment, material and supplies used in conducting the unlawful activity impounded.

4. The Tribal Court shall have jurisdiction over all violations of the Bingo Ordinance, As Amended. Nothing, however, in this Ordinance, shall be construed to authorize or require a criminal trial and punishment by the Pueblo of non-Indians except to the extent allowed or required by any applicable present or future act of Congress or any applicable federal court decision.

5. The Pueblo shall retain the right to revoke any license of any contractor who engages in conduct other than is authorized by this Ordinance or the contractor's agreement with the Pueblo which involves moral turpitude, dishonesty or any act which is punishable as a felony or misdemeanor involving moral turpitude under State or Federal laws.

6. Any property used in the commission of a violation or a provision of this Ordinance may be seized by the Tigua Gaming Agency or their agents. The owner of the property shall be afforded an opportunity to object and be heard in accordance with principles of due process. If no objection is raised, or the objection is not sustained, the Pueblo may dispose of the seized property.

7. Any non-Indian who violates a provision of this Ordinance may be excluded from the Indian Lands within the jurisdiction of the Ysleta Del Sur Pueblo Indian Tribe.

Section 23. Civil Penalties.

1. Any person or entity who violates any term or condition of this Ordinance or any provision of a management contract issued pursuant to Sections 15 or of Section 22, above, may be assessed a civil fine by the Pueblo. Such fine may be assessed only after the person or entity has been given notice and an opportunity to be heard before the Tribal Court. Each violation shall be treated separately and may be assessed as a separate violation.

2. The fine assessed pursuant to subparagraph 1, above, shall not exceed \$5,000.00 per violation, or twice the amount of any grand prize awarded in a gaming activity which is directly associated with the violation, whichever is greater.

3. Civil fines provided for in this Section may be imposed in addition to the criminal penalties provided for in Section 22 above.

Section 24. Enforcement.

After any person or entity fails or refuses to pay a final assessment levied pursuant to Section 22 and/or Section 23 above, the Pueblo may proceed to collect the assessment by initiating a civil action against the person or entity in the Tribal Court or in any other court of competent jurisdiction. In such civil action, validity and amount of the assessment shall not be subject to judicial review. The Pueblo shall be entitled to all remedies in law or in equity that are available to civil litigants generally and/or specially, by law.

VI. Validity of Ordinance

Section 25. Severability.

If any provision or provisions in this Ordinance are held invalid by a court of competent jurisdiction, this Bingo Ordinance, As Amended, shall continue in effect as if the invalid provision(s) were not a part hereof.


Section 26. Amendments.

The Bingo Ordinance, As Amended, may be amended by action of the Tribal Council and documented by Tribal Council Resolution.


Section 27. Effective Date of Ordinance.

This Bingo Ordinance, As Amended, shall take effect upon adoption of the Tribal Council and after it has been approved by the Chairman of the Commission.

NOW, THEREFORE, BE IT RESOLVED, that the foregoing amendment to Ordinance No. 00492 is hereby enacted by the Tribal Council of the Ysleta Del Sur Pueblo on this the 5th day of October, 1993.

By: 
Authorized Officer
Title: Governor

ATTEST:

By: 
Authorized Officer
Title: Tribal Secretary

CERTIFICATION

The foregoing amendment to Ordinance No. 00492 was considered by the Ysleta Del Sur Pueblo Tribal council at a duly called meeting and was adopted by the Tribal Council, with a quorum being present, and which meeting was held on the 5th day of October, 1993.

By: Julian Estrada
Authorized Officer
Title: Governor

ATTEST:

By: [Signature]
Authorized Officer
Title: Tribal Secretary

TERRENCE ANTHONY PADILLA
ATTORNEY AT LAW

P.O. BOX 66977
ALBUQUERQUE, NM 87193-6977

PHONE / FAX: (505) 836-2599
E-MAIL: TAPadilla@aol.com

Ms. Penny Coleman, Acting General Counsel
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington DC 20005

October 14, 2009

Re: Request for Ysleta Del Sur Pueblo Gaming Commission Training

Ms. Coleman:

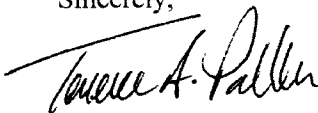
As counsel for the Speaking Rock Entertainment Center, an enterprise of the Ysleta Del Sur Pueblo in El Paso, Texas, I recently contacted the National Indian Gaming Commission's Phoenix Office and spoke to Mr. Lance Vallo, Field Investigator. I called to request training for the Pueblo's Gaming Commission. Though Speaking Rock utilizes sweepstakes entertainment devices, I believed that NIGC's general training could be helpful for our Commission. Mr. Vallo indicated that he would forward my request on to those within NIGC that had the authority to make a decision on that request.

I spoke with Mr. Vallo and Mr. Ken Billingsley, Regional Director, yesterday. They indicated that our request had been denied by the Oklahoma City Regional Office. I was informed that this was due to our status as an "illegal jurisdiction." Though Ysleta Del Sur is currently engaged in a suit with the state of Texas regarding the Pueblo's use of certain entertainment devices, the designation of *illegal activity* is far from determined. Should I desire a written explanation of the denial, I was informed that I should contact your office.

I would like to take this opportunity to request that NIGC reconsider our request. As you know, we can get training from any number of consultants, Joseph Eve comes to mind, however, NIGC still has the best and most comprehensive training that I am aware of. If this is impossible, I would respectfully request a written explanation of the denial from your office. As you can imagine, the Pueblo is going to want details regarding my request and its denial and I'd like to give them something tangible to review.

Should you require additional information, you may contact me at your convenience.

Sincerely,



Terrence A. Padilla

cc: file





February 23, 2010

Terrence A. Padilla, Esq.
P.O. Box 66977
Albuquerque, NM 87193-6977

Re: Request for Ysleta del Sur Pueblo Gaming Commission training

Dear Mr. Padilla:

This replies to your October 14, 2009 letter regarding the above-referenced matter. I apologize for not responding sooner.

I regret to inform you that the National Indian Gaming Commission ("NIGC") will not be able to comply with your request for training for the Ysleta del Sur Pueblo Gaming Commission. The Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721, established the NIGC to provide federal regulatory oversight over the gaming activities of federally recognized tribes, who pay a percentage of their gaming revenue to fund Commission activities, which include technical assistance and training.

While the Ysleta del Sur Pueblo ("Tribe") is federally recognized, the Tribe's gaming activities are governed by its restoration act, 25 U.S.C. § 1300g *et seq.*, and not by IGRA. *Ysleta del Sur Pueblo v. Texas*, 36 F.3d 1325, 1335 (5th Cir. 1994), *cert. denied* 514 U.S. 1016 (1995). The Tribe is therefore not under NIGC jurisdiction, and NIGC funds are not available to provide training to the Tribe.

Lastly, my staff spoke to NIGC Field Investigator Lance Vallo regarding your statement that the Tribe was told that its training request had been denied because of the Tribe's status as an "illegal jurisdiction." Mr. Vallo informed my staff that no one from the NIGC's Phoenix Region Office made a statement to the Tribe regarding an "illegal jurisdiction" or "illegal activity." I apologize if there was a miscommunication.

If you have any further questions, please do not hesitate to contact staff attorney Armando Acosta at (202) 632-7003.

Sincerely,



Penny J. Coleman
Acting General Counsel

cc: Lance Vallo, Field Investigator

CIVIL COVER SHEET

C
10-760
ESHJS-44
(Rev. 1/05 DC)

I (a) PLAINTIFFS YSLETA DEL SUR PUEBLO, a federally recognized Indian Tribe	DEFENDANTS NATIONAL INDIAN GAMING COMMISSION
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) <u>99999</u>	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE, IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Randolph H. Barnhouse, Luebben Johnson & Barnhouse LLP, 7424 4th St. N.W., Los Ranchos de Albuquerque, New Mexico 87107 (505)842-6123	Case: 1:10-cv-00760 Assigned To : Huvelle, Ellen S. Assign. Date : 05/12/2010 Description: Admn Agency Review

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)	III CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																								
<input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width: 100%;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act Social Security: <input type="checkbox"/> 861 HIA ((1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g) Other Statutes <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
<input type="radio"/> E. General Civil (Other) OR <input type="radio"/> F. Pro Se General Civil			
Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Bankruptcy <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	Forfeiture/Penalty <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other Other Statutes <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

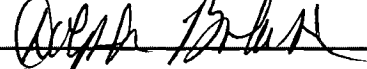
<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN
☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify)
 ☐ 6 Multi district Litigation
 ☐ 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 U.S.C. Sec. 702 Challenge to NIGC determination it has no jurisdiction over Ysleta del Sur Pueblo

VII. REQUESTED IN COMPLAINT ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ Check YES only if demanded in complaint
JURY DEMAND: YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☐ NO ☒ If yes, please complete related case form.

DATE 5-6-2010 **SIGNATURE OF ATTORNEY OF RECORD** 

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES. This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.