



**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

**APPROVAL OF
OHKAY OWINGEH
LEASING ORDINANCE**

The attached Ohkay Owingeh Leasing Ordinance, submitted by the Ohkay Owingeh (listed in the Federal Register, 80 FR 1945 (Jan. 14, 2015) as the Ohkay Owingeh, New Mexico), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 21 pages and adopted by Ohkay Owingeh on July 22, 2015, is hereby approved.

Dated: _____

1/4/16

Acting Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

Ohkay Owingeh Leasing Ordinance

Part 1—General Provisions

Section 1. Short Title

This ordinance may be cited as the Ohkay Owingeh Leasing Ordinance.

Section 2. Findings

The Tribal Council finds that:

- (1) Pueblo Land is available for leasing for business, commercial, industrial, wind and solar resource, agricultural, public, religious, educational, recreational, cultural, residential, and other purposes allowed by federal law;
- (2) Congress amended the Indian Long-Term Leasing Act, 25 U.S.C § 415, to allow Indian tribes to assume the responsibility for reviewing and approving leases of Indian lands;
- (3) there is a need for a streamlined leasing and review process that responds to the demands of the Pueblo and its community; and
- (4) it is in the best interest of the Pueblo to undertake the responsibility for reviewing and approving leases of Pueblo Land.

Section 3. Purpose

The purpose of this ordinance is to:

- (1) simplify and expedite the leasing process for Pueblo Land;
- (2) generate revenue from Pueblo Land; and
- (3) increase economic development on Pueblo Land.

Section 4. Definitions

When used in this ordinance, the term—

“Assignment” means a written agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee’s rights, and assumes all or some of the lessee’s obligations, under a Lease.

“Collateral Assignment” means the conditional assignment to a creditor as security for a debt of a lessee’s personal property interest in a Lease or improvement;

“Department” means the Ohkay Owingeh Department of Natural Resources.

“Environment” means the land, air quality, water, minerals, flora, fauna, ambient noise, areas of critical habitat, and objects or areas of historic, religious, or cultural significance to the Pueblo on Pueblo Land.

“Individually-Owned Land” means any tract, or interest therein, in which the surface estate is owned by an individual Pueblo member in Trust or Restricted Status.

“Lease” means a written agreement between the Pueblo and a lessee whereby the lessee is granted a right to possess and use only the surface of Pueblo Land for a specified purpose and duration. The lessee’s right to possess will limit the Pueblo’s right to possess the leased premises only to the extent provided in the Lease.

“Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that pledges a lessee’s or sublessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

“LTRO” means the Land Titles and Records Office of the BIA.

“Mineral Resources” means oil, gas, uranium, coal, geothermal, or other energy or non-energy minerals on Indian lands regulated by federal law, but does not include sand and gravel.

“Permit” means a written, non-assignable agreement between the Pueblo and a permittee whereby the Pueblo grants the permittee a temporary, revocable privilege to use Pueblo Land for a specific purpose.

“Public” means any person who: (A) is a tribal member; (B) resides on Pueblo Land within a quarter-mile radius of the area covered by the proposed Lease; and (C) will be directly affected by any Significant Effects of a proposed Lease on the Environment.

“Pueblo” means Ohkay Owingeh, a federally recognized Indian tribe.

“Pueblo Land” means any land, except individually owned land, in which the surface estate is owned by the Pueblo and is either held in Trust or Restricted Status.

“Pueblo Law” means the body of law of the Pueblo, consisting of its ordinances, regulations, and common law.

“Secretary” means the Secretary of the Interior or his designee, including the Bureau of Indian Affairs.

“Significant Effects” means a material and demonstrable negative change or impact on the Environment.

“State Agency” means any agency of the state of New Mexico responsible for reviewing environmental impacts of projects within the state.

“Sublease” a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the Lease.

“Tribal Council” means the governing body of Ohkay Owingeh.

“Trust or Restricted Status” means that (1) the United States holds title to Pueblo Land or interest in trust for the benefit of the pueblo; or (2) the pueblo holds title to Pueblo Land or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under federal law or limitations in federal law.

Part 2—Leases and Permits Generally

Section 5. Scope

(a) **Application.** Except as provided in subsection (b), this ordinance applies to Pueblo Land.

(b) **Exception.** This ordinance does not apply to Individually-Owned Land.

Section 6. Purposes

(a) **Authorized Purposes.** Except as provided in subsection (b), the Tribal Council may, on behalf of the Pueblo, approve a Lease for any purpose authorized by 25 U.S.C. § 415(h) and its implementing regulations.

(b) **Exception.** The Tribal Council may not approve a Lease for the exploration, development, or extraction of Mineral Resources on Pueblo Land.

Section 7. Applicable Law

- (a) **Leases and Permits.** Every Lease and Permit is subject to Pueblo Law and applicable federal law, unless the Tribal Council determines that it is in the Pueblo's best interests to include a provision stating that the Lease is subject to state or local law.
- (b) **Pueblo Land.** Pueblo Law applies to Pueblo Land, except to the extent Pueblo Law is inconsistent with applicable federal law.

Section 8. Duration

- (a) **Lease Term.** The Tribal Council may approve a Lease for—
- (1) business, wind and solar resource, energy, or agricultural, including, but not limited to grazing and crops, purposes for a term of not more than 25 years, except that the Lease may include options to renew of not more than two additional terms of 25 years each; and
 - (2) public, religious, educational, cultural, recreational, or residential purposes for a term of not more than 75 years.
- (b) **Permit Term.** The Department may approve a Permit for a term of not more than one year for any purpose in subsection (a).
- (c) **99-Year Leases.** The Tribal Council shall submit any Lease for a term of 99 years to the Secretary for approval and that Lease will be governed by 25 U.S.C. § 415 and its implementing regulations.

Part 3—Leasing Process

Section 9. Obtaining a Lease

- (a) **Application; Fee; Additional Information.**
- (1) The prospective lessee may request a Lease by submitting an application to the Department and a nonrefundable application fee. The application must, at a minimum, identify:
- (1) the applicant;
 - (2) the location of the Pueblo Land proposed for the Lease;
 - (3) the proposed duration for the Lease;

(4) the planned access to the Pueblo Land proposed for the Lease;

(5) the anticipated use of the Pueblo Land proposed for the Lease; and

(6) any planned, or use of existing, improvement on the Pueblo Land proposed for the Lease.

(2) The Department may require additional information from the prospective lessee.

(b) **Entry Permit.** Upon request of the prospective lessee, the Department may issue a Permit to allow the prospective lessee access to the Pueblo Land proposed for the Lease to prepare the documentation required by subsection (c).

(c) **Documentation; Additional Information.** The prospective lessee shall provide to the Department the following documentation for the Pueblo Land proposed for Lease:

(1) an appraisal;

(2) a land survey;

(3) the proposed type and location of any improvement;

(4) if applicable, a development plan and construction schedule for the improvement;

(5) if applicable, a proposed restoration and reclamation plan;

(6) an environmental review, which may be prepared by the Lessee, the Department, State Agency, or federal agency under Part 6 in the discretion of the Department; and

(7) a cultural and archeological survey.

(d) **Environmental Review Process.** Upon receipt of the application, documentation, and any additional information, the Department shall undertake the environmental review process in accordance with part 6.

(e) **Lease Negotiation**

(1) Upon completing, or during, the environmental review process, the Department and the prospective lessee may negotiate the terms and conditions of a proposed Lease.

(2) The Lease must contain the following provisions—

(A) a legal description, the purpose of the Lease, and the authorized uses of the Pueblo Land proposed for the Lease;

(B) the names of the parties to the Lease;

(C) the term of the Lease and any option to renew;

(D) the date of the Lease;

(E) the rent, its due date, adjustment, including how and when the adjustment will be done, when the adjustment will be effective, and how disputes regarding the adjustment or rental payment will be resolved, and form of payment;

(F) any late payment charges, interest, or special fees;

(G) any due diligence requirements;

(H) any required bond or other form of financial security;

(I) any insurance requirements;

(J) for agricultural leases, provisions requiring the lessee to manage land in compliance with any agricultural resource management plan developed by the Pueblo, and provisions requiring appropriate stipulations or conservation plans to be developed by the lessee for incorporation into the Lease; and

(K) any other terms and conditions negotiated by the parties or required by this ordinance.

(3) The following provisions must be included in every Lease:

(A) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 C.F.R. Part 171, the lessee shall pay all operation and maintenance charges that accrue during the Lease term. The

lessee shall pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

(B) The obligations of the lessee and its sureties to the Pueblo are also enforceable by the United States so long as the leased premises remain in Trust or Restricted Status.

(C) The lessee holds the United States and the Pueblo harmless from any loss, liability, or damages arising out of the lessee's use or occupation of the leased premises; and

(D) The lessee hereby indemnifies the Pueblo against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the Lease term, regardless of fault, except that the lessee is not required to indemnify the Pueblo for liability or cost arising from the pueblo's negligence or willful misconduct.

(f) **Approval of Lease.**

(1) At the conclusion of the leasing process under this part, the director of the Department shall recommend to the Tribal Council whether or not to approve the Lease.

(2) All leases governed by this ordinance are subject to approval by the Tribal Council.

(3) All permits governed by this ordinance are subject to approval by the Department.

Part 4—Lease Requirements

Section 10. Land Survey

(a) Except as provided in subsection (b), the Lease must describe the leased premises by reference to a land survey prepared by a professional surveyor licensed by the New Mexico state board of licensure for professional engineers and professional surveyors.

(b) If the leased premises cannot be described by reference to a land survey, the professional surveyor shall describe the leased premises using one or more of the following methods, each of which must be of sufficient detail to meet the recording requirements of the LTRO:

(1) a legal description;

- (2) a survey-grade global positioning system description; or
- (3) other description.

Section 11. Compensation

(a) **Rent Determination.** The Department shall determine the appropriate rent for a Lease through a market analysis, appraisal, or other valuation method; or negotiation.

(b) **Waiver; Nominal Rent.** The Department may waive the rent or charge nominal rent—

- (1) for a Lease for residential, educational, religious, or medical purposes;
- (2) for a Lease to use Pueblo Land by a federal, state, and local government, non-profit corporation, public project, or public utility, if the entity will provide an essential governmental service, benefit, or utility service to the Pueblo; or
- (3) to provide an incentive to the prospective lessee to locate on Pueblo Land.

(c) **Payment.** All rent must be paid directly to the Department on behalf of the pueblo. The Department shall account for all rent received for Pueblo Land.

Section 12. Bond

(a) **Required.** The prospective lessee shall file a bond or provide other security in a form and in an amount acceptable and payable to the Department to ensure or guarantee:

- (1) rent payment for an amount to be negotiated or determined by the Department;
- (2) construction of any improvement;
- (3) compliance with the restoration and reclamation plan;
- (4) removal of any improvement; or
- (5) performance of any other obligations under the Lease.

(b) **Waiver.** If the Department determines that it is in the Pueblo's best interests, the Department may waive or reduce the amount of the bond.

(c) **Notice of Cancellation.** The lessee shall provide the Department with 30 days' written notice of cancellation of the bond.

Section 13. Insurance

(a) **Requirements.** Except as provided in subsection (c), the prospective lessee shall secure and maintain insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent and authorized to do business in the State of New Mexico as specified in subsection (b).

(b) **Coverage.** The insurance must provide property and liability, crop and casualty coverage in amounts determined by the Department to be sufficient to cover any improvement, personal injury or death, or any other risk to which the Pueblo and the United States may be exposed. The insurance shall expressly name the Pueblo and the United States as additional named insured parties.

(c) **Waiver.** The Tribal Council may waive the insurance requirements only for a lessee of Pueblo Land for residential purposes.

Section 14. Improvements

(a) Approval

(1) No improvement may be placed or constructed on Pueblo Land, or developed for the benefit of Pueblo Land without the Tribal Council's prior approval. The Tribal Council may condition its approval upon certain requirements, including the provision of a bond or other financial security to assure proper removal of the improvements from Pueblo Land and the restoration and reclamation of Pueblo Land.

(2) The lessee shall make a request in writing to the Department for approval of an improvement. The Department is not obligated to approve any improvement.

(3) The Lease must identify any existing and proposed improvement approved by the Tribal Council.

(b) Removal

(1) Upon the termination of the Lease, the lessee shall remove every improvement from the Pueblo Land unless otherwise provided in the Lease or in

writing by the Department.

(2) No improvement may be removed without the Tribal Council's approval, if a lessee owes rent or any other sums under the Lease or is in breach of any material obligation or duty under the Lease.

(3) The Tribal Council may require that a certain improvement be left in place on Pueblo Land in which case the improvement will become the property of the pueblo.

(4) Any improvement left on Pueblo Land without the Tribal Council's approval remains the responsibility of the lessee and constitutes a nuisance until removed by the lessee. The Department may elect either (1) to take any necessary action to abate the nuisance, with all costs and fees incurred in so doing to be additional rent due from the lessee under the Lease, or (2) to declare that the improvements are abandoned and have become the property of the Pueblo.

(5) In all cases where an improvement is removed from Pueblo Land, the lessee shall be solely liable for the restoration of Pueblo Land to its condition prior to the placement of the improvement. The lessee's obligation to remove the improvement and to restore the Pueblo Land will survive the termination or cancellation of the Lease.

(6) All expenses, costs, and fees incurred by the Department as a result of improvements left on Pueblo Land without the Tribal Council's approval, and all expenses, costs, and fees incurred by the Department as a result of damage or waste to Pueblo Land and the improvement during the term of the Lease, or arising out of with the lessee's use and occupancy of Pueblo Land, remain the sole liability of the lessee and are deemed additional rent due at the time incurred.

Section 15. Sublease and Assignment

(a) **Approval Required.** An Assignment or Sublease is void without the Tribal Council's approval. The Tribal Council may condition its approval upon any terms or conditions deemed to be in the Pueblo's best interests. The Tribal Council may pre-approve a provision in a Lease allowing Assignment or Sublease if that provision is deemed to be in the best interests of the Pueblo.

(1) The Tribal Council shall not approve any Assignment or Sublease unless the lessee is in compliance with the terms of the Lease. The Tribal Council's approval of a Sublease or Assignment does not relieve the lessee from any liability that may have arisen before the Sublease or Assignment. The approval of a Sublease will not release the lessee from its continuing and primary liability for performance of all terms, duties, and obligations under the Lease.

(2) The approval of a Sublease or Assignment does not constitute approval of any subsequent Sublease or Assignment.

(b) **Application and Fee.** The lessee shall file an application with the Department for any Sublease or Assignment and pay an administrative fee.

(c) **No Extension of Lease; Notice.** No Assignment or Sublease will extend the term of the Lease, and the lessee shall notify its sublessee or assignee of the terms and conditions of the Lease.

(d) **Effect of Lease Termination.** The termination of the Lease automatically, and without notice, terminates any Sublease, unless otherwise agreed to in writing by the Department.

Section 16. Collateral Assignment and Leasehold Mortgage.

(a) **Conditions.** Unless otherwise provided in the Lease, and subject to the Tribal Council's prior approval, the lessee's or sublessee's interest in the Lease, Sublease, or any improvement may be made the subject of a Collateral Assignment or Leasehold Mortgage; provided that no Assignment or Leasehold Mortgage shall give the assignee or mortgagee the right to enter on or occupy the premises that are the subject of the Lease or Sublease without the written consent of the Tribal Council. An approved collateral assignee or mortgagee may place a lien on the lessee's or sublessee's interest in the Lease, Sublease, and any improvement covered by the Collateral Assignment or Leasehold Mortgage, but may not place a lien on the pueblo's interest in the Lease, Sublease or any improvement, or in the Pueblo's reversionary interest in the real and personal property subject to the Lease or Sublease. Any attempt by the lessee or sublessee to collaterally assign or mortgage its interest in a Lease, Sublease, or in any improvement, without the Tribal Council's approval, is void and will not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to the Lease, Sublease, or improvement.

(b) **Application.** A lessee or sublessee shall apply to the Department to collaterally assign or mortgage the lessee's or sublessee's interest in the Lease, Sublease, or any improvement in writing. Within five days of the closing, the lessee shall provide to the Department a copy of the Collateral Assignment or Leasehold Mortgage and pay any applicable fee set by the Department.

(c) **Additional Terms and Conditions.** The Tribal Council may approve the Collateral Assignment or Leasehold Mortgage subject to any terms and conditions deemed to be in the Pueblo's best interests.

(d) **Notice of Breach of Lease; Cure.**

(1) If the Department gives written notice to a lessee or sublessee of a breach of the Lease or Sublease, the Department shall also give written notice of the breach to the approved collateral assignee or mortgagee. The Department shall send the notice by certified mail to the most current name and address of the collateral assignee or mortgagee provided to the Department and no proof of receipt of the notice by the collateral assignee or mortgagee is required.

(2) The approved collateral assignee or mortgagee may cure the lessee's or sublessee's breach within the time periods provided to the lessee or sublessee under the Lease or Sublease. The Lease or Sublease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee or sublessee under the conditions provided in the Lease or Sublease.

(e) **Applicable Terms and Conditions.** A collateral assignee or mortgagee takes its interest subject to the following terms and conditions:

(1) The lessee or sublessee shall give notice to the Department of the terms and conditions to its collateral assignee or mortgagee upon making a Collateral Assignment or Leasehold Mortgage.

(2) The lessee or sublessee shall give notice to the Department of all proceedings to enforce or foreclose the Collateral Assignment or Leasehold Mortgage.

(3) The successor in interest to the lessee's or sublessee's interest in the Lease, Sublease, or in any improvement, as the result of the enforcement or foreclosure of a Collateral Assignment or Leasehold Mortgage, or an Assignment or conveyance in lieu of the enforcement or foreclosure, will be deemed to be an assignee under this section 16, subject to the Tribal Council's approval. The Tribal Council shall not approve any successor in interest unless the successor in interest, or the lessee or sublessee has paid all sums due and discharged all other pending obligations and duties under the Lease or Sublease.

Section 17. Effective Date of Leases and Lease Documents. Every Lease and Lease document, including any amendment, Assignment, Sublease, Leasehold Mortgage, must state their effective date.

Part 5—Permits

Section 18. Requirements

The director of the Department may issue a Permit to a permittee upon the following conditions:

- (1) the permittee agrees to indemnify and hold the Pueblo, its Tribal Council, councilors, officers, agents, and employees harmless from liability arising out of the permittee's use of Pueblo Land;
- (2) the permittee agrees to restore Pueblo Land to its original condition upon termination or demand, and to remove any improvement made thereon or, at the Department's option, to relinquish to the Pueblo any improvement;
- (3) the Permit is temporary in nature and contains provisions for termination without cause of not more than 90 days upon notice by the Department and may contain other provisions that the Department may require regarding the use of Pueblo Land; and
- (4) the permittee agrees pay: (i) an administrative fee determined by the Department to defray the costs in processing, considering and issuing the Permit, and (ii) a Permit fee determined by the Department.

Section 19. Bond

The Department may require the permittee to file a bond or provide other financial security in accordance with this ordinance.

Section 20. Limitations

No Permit issued by the Department may:

- (1) grant the permittee a legal interest in Pueblo Land;
- (2) exceed a term of one year;
- (3) grant the permittee a right to possess Pueblo Land or the ability to limit or prohibit others to access Pueblo Land; or
- (4) result in any Significant Effects on the Environment.

Section 21. Enforcement. The Pueblo is solely responsible for enforcing violations of any Permit.

Part 6—Tribal Environmental Review

Section 22. Preparation of Environmental Review Statement

- (a) **Requirement.** (1) Except as provided in subsection (b), the Department shall prepare an environmental review statement that identifies and evaluates any

Significant Effects of the proposed Lease on the Environment, unless the Department in its discretion has determined that the Lessee, State Agency, or federal agency will prepare the environmental review statement for the Department's review.

(2) The National Environmental Policy Act does not apply to any Lease or approval of any Lease under this ordinance.

(b) **Exceptions.** (1) The Department shall not prepare an environmental review statement for any proposed Lease that:

(A) will not result in any significant change in the use of Pueblo Land;

(B) will not by its nature have any Significant Effects on the Environment, but the Department has complied with the documentation requirements of section 31; or

(C) covers Pueblo Land for which (i) the Department has prepared an earlier environmental review in accordance with this ordinance, or (ii) a State Agency, federal agency, or a non-pueblo entity or person has prepared an environmental review in accordance with NEPA or other applicable law, and the date of that environmental review is within five years of the beginning of the Lease term.

(2) The Department shall issue a written report documenting its decision not to prepare an environmental review statement based on any of the exceptions stated in subsection (b)(1).

Section 23. Public Participation

(a) **Public Notice.** The Department shall notify the public of the environmental review statement by any one of the following methods:

(1) publishing the notice in a newspaper or newsletter of general circulation in the Pueblo community;

(2) posting the notice at the tribal administration building; or

(3) disseminating the notice in a manner reasonably calculated to reach the Public.

(b) **Notice Contents.** The notice of environmental review statement must contain the following information:

(1) a summary of the proposed Lease;

- (2) a summary of the need for the proposed Lease;
- (3) a summary of the environmental review statement;
- (4) the location where the Public can without charge obtain a copy of the environmental review statement;
- (5) the Department's recommendation on the proposed Lease; and
- (6) an invitation to the Public to submit written comments to the Department regarding the environmental review statement during a comment period not to exceed 20 days from the date the notice is published.

(c) **Public Comments; Response.** The Department shall consider all written comments received from the Public and provide a written response to all relevant and substantive comments within 20 days of the closing of the comment period and before approving the proposed Lease. The Department's written response will identify any recommended mitigation or conditions of approval on the proposed Lease. The Department shall notify the Public of its response to comments in accordance with section 23(a). Based on comments received and without need of initiating another comment period, the Department may revise the environmental review statement, or impose restrictions as a condition of approval of the proposed Lease.

Section 24. Environmental Review Statement

(a) **Contents.** The environmental review statement need only consider the substantive features of the proposed Lease and does not need to consider alternative actions or transactions, including a no-action alternative, but shall consider Significant Effects

(b) **Minimum Review Requirements.** The level of detail and depth of the analysis conducted by the Department is limited to the minimum needed to determine whether there would be Significant Effects of the proposed Lease on the Environment.

Section 25. Environmental Review Statement Documentation.

An environmental review statement may be prepared in any format to facilitate identification and evaluation of any Significant Effects of the proposed Lease on the Environment.

Section 26. Environmental Review Prepared by Another Entity

- (a) **Reliance on State Review.** The Department may rely on the environmental review process of any State Agency rather than on the tribal environmental review process in this Part 6.
- (b) **Reliance on Federal Review.** The Department may rely on the environmental review process of any federal agency rather than on the tribal environmental review process in this Part 6, if the Pueblo carries out a project or activity funded by the federal agency.
- (c) **Reliance on Other Review.** The Department may rely on the environmental review statement of any person or entity rather than on the environmental review process in this Part 6 on the conditions that the resulting environmental review meets the threshold requirements of the environmental review process of this Part 6 and the Department complies with the Public comment and response requirements stated in section 23(c).

Section 27. Conclusion of Environmental Review Statement Process.

- (a) **Consideration Requirements.** The Tribal Council may approve or disapprove the proposed Lease only after the Department:
 - (1) identifies and evaluates any Significant Effects of a proposed Lease on the Environment;
 - (2) publishes notice of environmental review statement;
 - (3) receives and reviews Public comments; and
 - (4) provides written responses to any Public comments.
- (b) **Appeal.** The Public may appeal the Department's decision to the tribal court in accordance with Part 9.

Part 7— Lease Administration

Section 28. Administration

- (a) **Administration under Ordinance and Federal Law.** The Department shall administer all any Lease or Permit approved under this ordinance.

(b) **Management Practices.** The Department shall employ sound real estate management practices under this ordinance, including collections, monitoring, enforcement, relief, and remedies.

Section 29. Accounting

The Pueblo's department of accounting shall implement and maintain an accounting system to ensure proper accounting of rent payments of leases in accordance with generally accepted accounting principles.

Section 30. Administrative Fees

The Department may charge an administrative fee to cover the expense of processing a Lease, Sublease, Assignment, amendment, Collateral Assignment, Leasehold Mortgage, or other transaction under this ordinance.

Section 31. Documentation

(a) **Filing with LTRO.** Except as provided in subsection (b), the Department shall provide copies of the following to the Secretary for filing with the LTRO:

(1) leases, including any amendment or renewal thereof, approved under this ordinance; and

(2) Lease documents, including any amendment, Assignment, Collateral Assignment, Sublease, Leasehold Mortgage, and other documents showing rental payments to the Pueblo sufficient to enable the Secretary to discharge the trust responsibility of the United States under 25 U.S.C. § 415(h)(7).

(b) **Exception.** The Department is not required to provide to the Secretary a copy of any Permit.

Part 8. Enforcement

Section 32. Enforcement

(a) The Department shall enforce the terms and conditions of any Lease or Permit approved in accordance with this ordinance.

(b) Nothing in this ordinance prohibits the Department from requesting the Secretary to enforce the terms and conditions of, or cancel, any Lease.

Section 33. Default, Cancellation, and Remedies

(a) **Default.** Unless otherwise stated in a Lease, the lessee shall be in default under a Lease if a breach of the Lease is not cured within 30 days after the Department gives notice of the breach to the lessee. A breach of the Lease, includes a failure to pay any rent or other monetary obligation due under the Lease, violation of any term, condition, or covenant of the Lease, or failure to perform or observe any other obligation under the Lease.

(b) **Notice.** (1) For a notice to be valid, it must be in writing and delivered (A) by hand, (B) by a national courier, with all fees prepaid, or (C) by registered or certified mail, return receipt requested and postage prepaid.

(2) A notice will be effective when received by the lessee. The notice will be deemed to have been received as follows:

(A) if it is delivered by hand, delivered by a national courier, with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt; and

(B) if the lessee rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

(c) **Remedies.** (1) On the default of a lessee, the Department shall have all the remedies available at law or in equity and as provided in the Lease, including terminating or cancelling the Lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

(2) If the Lessee does not cure a violation of a Lease within the required cure period, the Department may, in addition to any other remedies, cancel the Lease upon notice to the lessee and any surety and mortgagee of the cancellation. The cancellation notice must (i) explain the grounds for cancellation; (ii) if applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the Lease; (iii) notify the lessee of the lessee's right to appeal under Part 9, including the possibility that the tribal court to whom the appeal is made may require the lessee to post an appeal bond; (iv) order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and (v) order the lessee to take any other action the Department deems necessary to protect the Pueblo.

(d) **Compliance with Lease.** Pending resolution of any dispute, the lessee shall continue to pay all rent and comply with the terms of the Lease, including any requirements for environmental or hazardous waste remediation and reclamation of the leasehold premises. If the lessee fails to make such payments pending the outcome of an appeal, the Department may immediately commence eviction proceedings, bring an action in forcible entry and detainer, or take any other action under Pueblo Law or applicable federal law it deems appropriate to protect the Pueblo's interests.

Section 34. Interest; Fees

A Lease shall specify the rate of interest to be charged if the lessee fails to make payments on time, and identify additional late payment fees. Unless the Lease provides otherwise, interest charges and late payment fees will apply in the absence of any notice to the lessee from the Department, and the lessee's failure to pay such amounts will be treated as a breach of the Lease.

Section 35. Harmful or Threatening Activity

If a lessee or other party causes or threatens to cause immediate and significant harm to the leased premises or engages in criminal activity thereon, the Department may take appropriate emergency action in accordance with Pueblo Law, including cancelling the Lease, commencing eviction proceedings, bringing an action in forcible entry and detainer, or taking any other action deemed appropriate to protect the public interest, the leased premises, and the Environment.

Section 36. Holdover and Trespass

If a lessee remains in possession of the leased premises after termination of the Lease, the Department may treat the continued possession as a holdover tenancy or as a trespass, and if Department treats the continued possession as a trespass, the Department may pursue any remedy available under Pueblo Law or federal law.

Part 9—Appellate Review

Section 37. Appeals

(a) Notice of Appeal; Contents; Service.

(1) The lessee or interested party may appeal the Department's final determination to the tribal court by filing a notice of appeal in the tribal court within 14 days of the Department's final determination.

- (2) The notice must state the following:
 - (A) the lessee's or interested party's interest;
 - (B) the facts necessary to understand circumstances giving rise to the appeal;
 - (C) the question to be resolved; and
 - (D) the relief sought.

(3) The lessee or interested party shall serve the notice by mailing a copy to the director of the Department and the governor of the Pueblo within five business days after the filing of the notice of appeal in the tribal court.

(b) **Appeal Bond.** Upon the Department's motion, the tribal court may require the lessee or interested party to file a bond or provide other security in any form and amount necessary to protect the Department from financial losses.

(c) **Scope of Review.** The tribal court shall uphold the Department's final determination unless it finds that the Department's action:

- (1) was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law;
- (2) exceeded the Department's jurisdiction, authority, or limitations;
or
- (3) is unsupported by substantial evidence.

Part 10—Miscellaneous

Section 38. Regulations

The Department may issue regulations to implement this ordinance.

Section 39. Sovereign Immunity

Nothing in this ordinance may be construed as waiving of the sovereign immunity of the Pueblo, the Tribal Council, or the Department.

Section 40. Severability

If any court of competent jurisdiction determines any provision in ordinance is invalid, void, or unenforceable, the remaining provisions remain in full force and effect without regard to the invalid, void, or unenforceable provision.

Section 41. Effective Date

This ordinance takes effect upon approval by the Secretary.

Section 42. Amendments

(a) **Substantive Amendments.** The Tribal Council may propose amendments to this ordinance concerning matters specifically governed by 25 U.S.C. § 415 and its implementing regulations, subject to approval of the Secretary.

(b) **Non-Substantive Technical Amendments.** The Tribal Council may approve all amendments to this ordinance not subject to subsection (a).