



# GUIDIVILLE

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## Indian Rancheria

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### ORDINANCE OF THE GUIDIVILLE BAND OF POMO INDIANS OF THE GUIDIVILLE INDIAN RANCHERIA

**ORDINANCE NAME:** GUIDIVILLE INDIAN RANCHERIA TRIBAL LENDING  
REGULATORY ORDINANCE

**ORDINANCE NUMBER:** 10-1

**DATE APPROVED:** December 13, 2010

**DATES AMENDED:** 01-31-2011, 03-31-2011, 09-03-13, 01-28-16 and 07-12-2018

**WHEREAS,** the Guidiville Indian Rancheria is a federally recognized Indian tribe as a result of the *Scotts Valley et al. v. United States*, case of September 6, 1991 (No. C-86-3660-VRW); and,

**WHEREAS,** the Tribal Council of the Guidiville Indian Rancheria is the duly authorized governing body of the Tribe to fully exercise governmental responsibilities, and is empowered to make Tribal policy, pass Tribal codes and ordinances, approve contracts, and carry out Tribal business under the authority of the Constitution of the Guidiville Indian Rancheria; and

**WHEREAS,** the Tribal Council desires to expedite the development of the economy of the Guidiville Indian Rancheria in order to advance the Tribal economic self-sufficiency, to enable the Tribe to better serve the social, economic, educational, health and safety needs of its members and visitors, and to provide its members with opportunities to improve their own economic circumstances; and

**WHEREAS,** consumer lending within the jurisdiction of the Guidiville Tribe has been authorized by the Tribal Council pursuant to Ordinance No. 10-01, dated the 13th day of December, 2010 and necessary regulatory authority established pursuant to Resolution No. 10-11, dated the 13th day of December, 2010; and



**WHEREAS,** amendments to the Tribal Lending Regulatory Ordinance can be made by a duly enacted Resolution of the Tribal Council; and

**WHEREAS,** the Tribal Council has reviewed the amended Tribal Lending Regulatory Ordinance to ensure it adequately defines the parameters of operation of the entity and delegates the appropriate authority to it to serve the purpose for the benefit of the Tribe for which it is being established and determined that such amendments are in the best interest of the Tribe.

**NOW, THEREFORE, BE IT RESOLVED** that the Tribal Council, representing the governing body of the Guidiville Band of Pomo Indians does hereby amend and accept the following:

### **SECTION 1. FINDINGS, INTENT AND POLICY**

**1.1. Findings.** The Tribal Council of the Guidiville Band of Pomo Indians of the Guidiville Rancheria, the primary governing body of the Tribe, finds that:

- (a) The Tribe desires to expedite the development of the economy of the Tribe in order to improve the Tribe's economic self-sufficiency, to enable the Tribe to better serve the social, economic, educational, and health and safety needs of its members and visitors, and to provide its members with opportunities to improve their own economic circumstances.
- (b) Tribal operation and licensing of one or more consumer lending businesses is a legitimate means of generating revenue to address the aforementioned needs and pursuing the Tribe's goal of self-sufficiency and self-determination.
- (c) The Tribe has the legal authority to license and regulate consumer lending businesses within its jurisdiction.
- (d) Properly licensed and regulated lending is consistent with announced federal policy promoting tribal self-government and economic self-sufficiency.
- (e) Tribal regulation and control of consumer lending businesses within the jurisdiction of the Tribe is essential for the protection of the public welfare.
- (f) It is essential that the Tribal Council regulate lending in a manner commensurate with Tribal law and policy and applicable federal law.
- (g) It is essential that public confidence in lending that takes place within the Tribe's jurisdiction is maintained.
- (h) Adoption of a Tribal Lending Regulatory Ordinance by the Tribal Council is a necessary condition for the legal operation of consumer lending on Trust Land and is in the best interest of the Tribe.

- (i) Establishment of a Tribal Lending Regulatory Authority to implement the purpose and intent of the Tribal Lending Regulatory Ordinance is in the best interest of the Tribe.

**1.2. Intent.** The Tribal Council, on behalf of the Tribe, declares that the intent of this Ordinance is to:

- (a) Expedite the development of the economy of the Guidiville Band of Pomo Indians of the Guidiville Rancheria for the purposes described in Section 1.1(a) above.
- (b) Define general regulatory powers to be exercised by a Tribal Lending Regulatory Authority in relation to the regulation, control, and oversight of consumer lending businesses and, to the extent determined by the Tribal Lending Regulatory Authority, their vendors.
- (c) Ensure that all lending revenues are used for the benefit of the Tribe and the community.
- (d) Ensure that lending is conducted appropriately by licensees and borrowers and that it remains free from corrupt, incompetent, unconscionable and dishonest practices.
- (e) Protect the interests of the public in the offering of lending services.
- (f) Ensure the maintenance of public confidence in Tribal lending practices.
- (g) Ensure that the Tribe provides a fair and impartial forum for the resolution of Lending disputes.
- (h) Ensure that Tribal lending laws are strictly and fairly enforced upon persons involved in Tribal lending activities.

**1.3. Policy.**

- (a) Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of Tribal self-government. Revenues from Lending shall be utilized and expended only for the following purposes:
  - (1) To fund the Tribe's government operations or programs.
  - (2) To provide for the public health and general welfare of the Tribe and its members and visitors to the Tribal community.
  - (3) To promote Tribal economic development and self-sufficiency.
  - (4) To donate to charitable organizations.



- (b) Tribal Lending Policy. The establishment, promotion and operation of lending is necessary, provided that such lending is regulated and controlled by the Tribe pursuant to this Ordinance and the governmental revenues generated by such lending received by and payable to the lender are used exclusively for the benefit of the Tribe.
- (c) Responsibility for Regulation. The Tribe shall have sole proprietary interest in and responsibility for the conduct of lending activities authorized by this Ordinance.
- (d) Lending Authorized. Lending is authorized and permitted only as described in this Ordinance and its implementing regulations.

## SECTION 2. DEFINITIONS

**2.1 Definitions.** In this Ordinance, except where otherwise specifically provided or unless the context otherwise requires, the following terms and expressions shall have the following meanings:

- (a) "Applicant" means any Person who has applied for a License under the provisions of this Ordinance.
- (b) "Application" means a request for the issuance of a License under the provisions of this Ordinance.
- (c) "Borrower" means a person who enters into a transaction with a Lender Licensee, who has acknowledged by separate electronic signature after appropriate and prominent disclosure those provisions expressly required by this Ordinance
- (d) "Financial Backer" means any individual, corporation, partnership or any other business entity or group or combination of individuals however organized that provides financial backing to a Lender. This definition expressly excludes any Borrower, but only to the extent acting as a Borrower.
- (e) "Lender" means a Person or entity that is licensed by the Authority to engage in Lending.
- (f) "Lending" or "Tribal Lending" means the business of extending credit to borrowers in exchange for interest, fees, or some other form of consideration within the Tribe's jurisdiction. "Lending" or "Tribal Lending" includes all acts or practices associated with a credit transaction and includes every aspect of an Applicant's or Borrower's dealing with a Lender, including but not limited to, information requirements, investigation procedures, standards of creditworthiness, terms of credit, furnishing credit information, revocation, alteration, or termination of credit, and collection procedures.
- (g) "License" means the official, legal and revocable Lending License, granting



permission from the Tribal Lending Regulatory Authority to an Applicant to conduct Lending or to be a Vendor; or a Financial Backer; to a tribally authorized lending entity. A License relating to Lending is a revocable privilege.

- (h) "Licensee" means a Person that is licensed as a Lender, Vendor, or Financial Backer, by the Authority.
- (i) "Ordinance" means this Tribal Lending Regulatory Authority Ordinance.
- (j) "Person" means an individual, corporation, partnership or any other business entity or group or combination of individuals however organized who engages or seeks to engage in the business of Lending as a Lender, Vendor, or Financial Backer, pursuant to this Ordinance.
- (k) "Tribal Council" means the Guidiville Tribal Council, the governing body of the Tribe as defined and described in Article IV, Section 3 of the Tribe's Constitution.
- (l) "Tribal Lending Regulatory Authority" or "Authority" means the regulatory authority established and described in Section 4 of this Ordinance.
- (m) "Tribe" means the Guidiville Band of Pomo Indians of the Guidiville Rancheria.
- (n) "Trust Land" means land held by the federal government for the benefit of the Guidiville Band of Pomo Indians of the Guidiville Rancheria
- (o) "Vendor" means, to the extent determined in the discretion of the Authority, any individual, corporation, partnership or any other business entity or group or combination of individuals, however organized, that provides goods, intellectual property and/or consulting services that specialized to the lending industry.

### SECTION 3. GENERAL PROVISIONS

- 3.1 **Authority.** This Ordinance is enacted pursuant to the inherent sovereign powers of the Guidiville Band of Pomo Indians of the Guidiville Rancheria and in accordance with Article V, Sections 1 of the Tribe's Constitution.
- 3.2 **Construction.** In construing the provisions of this Ordinance, the following shall apply:
  - (a) The provisions of this Ordinance, being necessary for the benefit of the Tribe and its members, shall be liberally construed to effectuate its purpose and to promote substantial justice.
  - (b) The Findings, Intentions, and Policies stated in Section 1 constitute the standards to be observed by the Authority in the exercise of its discretionary powers under the Ordinance, in the adoption of implementing regulations, in



the issuance of orders and declaratory statements, in the examination and supervision of Licensees, and in all matters of construction and application of the Ordinance required for any determination or action by the Authority.

- (c) Because the provisions of this Ordinance are deemed by the Tribe to be inherently civil and regulatory in nature, no Person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the Authority, shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no Person other than the Person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.
- (d) The Authority is vested with the authority promulgate regulations to implement and advance the purposes of this Ordinance. Accordingly, courts, arbitration panels and other dispute resolution forums shall give deference to regulations promulgated, and interpretive decisions made, by the Authority so long as they are reasonable under the circumstances.
- (e) This Ordinance is intended for the benefit the Guidiville Band of Pomo Indians. Accordingly, any ambiguities in this Ordinance shall be interpreted in favor of the Tribe.
- (f) Words of the masculine gender or neuter include masculine and feminine genders and are the neuter.
- (g) Words in the present tense include the future and past tenses.
- (h) Words in the singular number include the plural, and words in the plural number include the singular.

**3.3 Effective Date and Transition.** This Ordinance shall take effect and be in full force and effect from and after the date of its final passage and approval by the Tribal Council. The Authority may waive or condition a provision of this Ordinance for a reasonable period to allow for the deliberate transition to compliance with amendments to this Ordinance.

#### **SECTION 4. TRIBAL LENDING REGULATORY AUTHORITY**

**4.1 Establishment and Purpose.** The Tribal Council hereby charters, creates and establishes the Tribal Lending Regulatory Authority as a governmental subdivision and arm of the Tribe. The Authority has charge of the implementation of the ordinances and regulations of the Tribe relating to Lending activities and associated licensing requirements.



**4.2 Location and Place of Business.** The Authority shall maintain its headquarters, principal place of business and office on Trust Land. The Authority may, however, with a majority vote from the Tribal Council, establish other places of business in such other locations as the Authority may from time to time determine to be in the best interest of the Tribe.

**4.3 Duration.** The Authority shall have perpetual existence and succession in its own name, unless dissolved by the Tribal Council pursuant to Tribal law.

**4.4 Attributes.** As a governmental subdivision of the Tribe, the Authority is under the direction and control of the Tribal Council, and it is the purpose and intent of the Tribal Council that the operations of the Authority be conducted on behalf of the Tribe for the primary benefit and interests of the Tribe, its members and residents of and visitors to the Tribe's Trust Land.

(a) Arm of Tribe. In carrying out its purposes under this Ordinance, the Authority shall function as an arm of the Tribe.

(b) Tribal Actions. Notwithstanding any authority delegated to the Authority under this Ordinance, the Tribe reserves to itself the right to bring suit against any Person in its own right for violations of this Ordinance, on behalf of the Tribe or on behalf of the Authority, whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Authority.

**4.5 Sovereign Immunity of the Authority.**

(a) Immunity from Suit. The Authority is cloaked by Tribal and U.S. federal law with all the privileges and immunities of the Tribe, except as specifically limited by this Ordinance, including sovereign immunity from suit in any tribal, federal or state court.

(b) No Waiver. Nothing in this Ordinance shall be deemed or construed to be a waiver of sovereign immunity of the Authority from suit, which shall only be waived pursuant to subsection 4.5(e).

(c) No Consent to Jurisdiction. Nothing in this Ordinance shall be deemed or construed to be a consent of the Authority to the jurisdiction of the United States or of any state or of any other Tribe with regard to the business or affairs of the Authority.

(d) Subpoenas and Summons. Summons and subpoenas issued by any entity other than (i) a federal Grand Jury; (ii) an enforcement agency of the United States; (iii) the United States District Court in an action by the United States and an agency thereof, against the Tribe, tribal officials or a political subdivision of the Tribe, or (iv) Tribal Court to be served on the Tribe,



including the Authority, are void. The Authority has no capacity to accept service of process of such summons or subpoenas.

(e) Waiver of Sovereign Immunity of the Authority. Sovereign immunity of the Authority may be waived only by express resolution of the Tribal Council.

(1) Resolution Effecting Waiver. All waivers of sovereign immunity must be expressly provided by resolutions of continuing force and effect issued by the Tribal Council.

(2) Policy on Waiver. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Authority or the Tribe.

(3) Limited Nature to Waiver. Waivers of sovereign immunity shall not be general, but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Authority subject thereto, and the court having jurisdiction pursuant thereto and law applicable thereto.

(4) Limited Effect of Waiver. Neither the power to sue and be sued provided in subsection 4.11(i) herein, nor any express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Authority other than property specifically pledged or assigned, a consent to suit with respect to any land within the exterior boundaries of the Tribe's Trust Land, or a consent to the alienation, attachment or encumbrance of any such land.

(5) Suit Against Tribe Beyond Authority Voids Waiver. In the event a waiver has been obtained pursuant to this subsection and a lawsuit is filed against the Tribe, its agents and/or officials and/or political subdivisions other than the Authority, such filing automatically and immediately voids the Waiver.

Suit for Class-Action Voids Waiver. In the event a waiver has been obtained pursuant to this subsection 4.5(e) and a lawsuit is filed that as filed or upon motion seeks certification as class-action lawsuit, such filing automatically and immediately voids the Waiver.

**4.6 Assets of the Authority.** The Authority shall have only those assets specifically assigned to it in writing by the Tribal Council, acquired in its name by the Tribe, or acquired by the Authority on its own behalf. No activity of the Authority or any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Tribe not assigned in writing to the Authority.



**4.7 Regulatory Agent; Compensation, Duties.**

(a) Regulatory Agent. The Authority shall initially be governed by one (1) Agent appointed by the Tribal Council. The Tribal Council may increase the number of Agents by Resolution, as it deems necessary to conduct the governmental operations of the Authority. The Agent shall be appointed for a term of at least one (1) year, or until the Agent is otherwise replaced or removed by the Tribal Council.

(b) Compensation. The Tribal Council shall establish the compensation of the Agent from time to time.

(c) Duties. The Agent shall have the following responsibilities:

- (1) Oversee and have responsibility for the day-to-day operations of the Authority, including supervision of Authority employees;
- (2) Serve as the agent for service of process; and
- (3) Conduct or oversee the conduct of any meetings or hearings held by the Authority in accordance with this Ordinance or further directive of the Tribal Council.

(d) Agent Qualifications. Any person appointed as an Agent of the Authority shall meet the following qualifications:

(1) The Agent shall have expertise, experience, education or a combination thereof in the following areas: lending, finance, management, business, governmental regulation, law, and/or Tribal policy.

(2) The Agent shall be at least twenty-one (21) years of age and show proof of High School Diploma or equivalent.

(3) No person shall serve as Regulatory Agent if:

(A) His/her prior activities, criminal record, if any, or reputation, habits or associations:

(i) Pose a threat to the public interest; or

(ii) Threaten the effective regulation and control of Lending; or

(iii) Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of Lending.

(B) He/she has been convicted of or entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction; or



- (C) He/she, or any member of his or her "Immediate Family" has an ownership, partnership or other direct monetary or financial interest in the conduct of any Licensee, or is in privity with a Lender Licensee, or one of its agents, contractors, or sub-contractors; or if he or she has any other personal or legal relationship that places him/her in a conflict of interest with any Licensee. For purposes of this subsection, "Immediate Family" includes spouse or significant other, parents, children, and siblings. Ownership of a Lender by virtue of membership in the Tribe is not a per se monetary or financial interest in the conduct of any Licensee.

**4.8 Meetings.** The Authority shall hold or participate in such meetings with the Tribal Council.

**4.9 Prohibited Acts.** The Agent and Authority employees shall not do any of the following with respect to any Licensee under the jurisdiction of the Authority:

- (a) Be indebted, either directly or indirectly, as borrower, accommodation endorser, surety or guarantor to any Licensee unless such indebtedness was contracted before becoming employed by or appointed to the Authority and is fully disclosed to the Authority. In addition, the Agent must disclose such indebtedness to the Tribal Council prior to appointment.
- (b) Be an officer, director, or employee of any Licensee.
- (c) Own or deal in, directly or indirectly, the shares or obligations of any Licensee.
- (d) Be interested in, directly or indirectly, or receive from any Licensee or any officer, director, or employee of any Licensee any salary, fee, compensation or other valuable thing, by way of gift, donation, credit, or compensation for services or otherwise; except that an Agent or Authority employee is permitted to receive his or her pro-rata share of revenue that has been generated by a Lender and is distributed among all eligible Tribal members by virtue of membership in the Tribe, and except that an Agent or Authority employee may receive nominal gifts provided in the ordinary course of business such as meals or transportation, so long as such nominal gifts are fully disclosed to the Tribal Council.

**4.10 Removal of Regulatory Agent / Vacancy.**

- (a) Removal. The Agent may be removed by the Tribal Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of Lending, or the Authority, or violates the letter or intent of this Ordinance. The decision of the Tribal Council concerning removal of a Regulatory Agent shall be final.



- (b) Vacancy. If the Regulatory Agent shall die, resign, be removed, or for any reason, be unable to serve as an Agent, the Tribal Council shall declare his or her position vacant and shall appoint another qualified person to fill the position within thirty (30) days of the vacancy.

**4.11 Powers of the Authority.** The Authority has the authority and responsibility for the discharge of all duties imposed by law and this Ordinance on the Authority. In furtherance, but not in limitation of, the Authority's purposes and responsibilities, and subject to any restrictions contained in this Ordinance or other applicable law, the Authority shall have, and is authorized to exercise the following powers and responsibilities in addition to all powers already conferred by this Ordinance:

- (a) To promulgate, adopt, and enforce regulations and rules furthering the purpose and provisions of this Ordinance.
- (b) To examine or inspect or cause to be examined or inspected each Licensee annually and more frequently, if the Authority considers it necessary, based on credible evidence that a violation of this Ordinance has occurred or may be occurring.
- (c) To make or cause to be made reasonable investigations of any Licensee, or Person, as it deems necessary to ensure compliance with this Ordinance or any order of the Authority.
- (d) To establish procedures designed to permit detection of any irregularities, fraud, or the like.
- (e) Upon prior explicit resolution and approval of the Tribal Council, to employ such advisors as it may deem necessary. Advisors may include, but are not limited to, lawyers, accountants, law enforcement specialists and Lending professionals.
- (f) To accept, review, approve or disapprove any Application for a License, including conducting or arranging for background investigations of owners, officers and/or employees of any Applicants, as deemed appropriate by the Authority.
- (g) To examine under oath, either orally or in writing, in hearings or otherwise, any of Licensee with respect to any matters related to this Ordinance and to compel by subpoena the attendance of any such senior officers and the production of any books, records, and papers with respect to Licensee's operations relating to their compliance with this Ordinance and/or any order of the Authority.
- (h) To discipline any Licensee in violation of this Ordinance by ordering immediate compliance and suspending or revoking any License pursuant to



the hearings and due process required by Section 4.17 of this Ordinance.

- (i) To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to Sections 4.5 and 4.6 herein, provided, that no suit shall be brought by the Authority without the prior explicit written approval of the Tribal Council.
- (j) To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Authority's authorized activities, subject to any approval of the Tribal Council that may be required by the Tribal Council.
- (k) To establish and maintain such bank accounts as may be necessary or convenient.
- (l) To enter into contracts as needed to perform its obligations under this Ordinance and to provide for the day-to-day operations of the Authority; however, if the contracting entity is in a possible conflict-of-interest with the Authority, the Authority shall only proceed with the contract if the possible conflict-of-interest is disclosed to the Tribal Council and the Tribe Council agrees to waive the possible conflict-of-interest. If the contract requires licensure by the Authority, such contract shall not be executed prior to written notice from the Authority that such applicant is deemed eligible for licensure.
- (m) To make such findings as may be necessary to implement the Authority's duties and powers, with such findings to be given deference as the legally binding findings of a governmental entity.
- (n) To adopt a schedule of fees to be charged for the processing, issuance and renewal of Licenses, including fees or charges associated with conducting background checks; for reasonable examinations of Licensees; and for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records; and to impose the forgoing fees as applicable.
- (o) To deem a Loan Agreement unconscionable if, after an investigation and review of a Borrower complaint, it finds that the underlying Agreement was formed through improprieties in the process of its construction and formation or the actual terms are unduly harsh, commercially unreasonable, or grossly unfair given the existing circumstances.
- (p) To investigate, police, and prevent lending practices and conduct by associated service providers that are unfair, deceptive, or abusive practices towards consumers.

#### **4.12 Investigations, Right of Entrance.**

- (a) Investigations. At its sole expense, the Authority, upon complaint or upon its



own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any Licensee.

(1) In conducting such investigation, the Authority shall make no order or final decisions without affording any affected party notice and a hearing pursuant to Section 4.16 of this Ordinance.

(2) This power to investigate does not authorize the Authority to manage the day-to-day operations of a Licensee.

(b) Right of Entrance. At its sole expense, the Authority and duly authorized employees or agents of the Authority may, during regular business hours, reasonably enter upon any premises of any Lending Licensee engaging or participating in Lending for the purpose of making inspections and examining the accounts, books, papers and documents of any such Licensee for the sole purpose of determining whether any violations of this Ordinance or any order of the Authority has occurred.

(c) Aid to Entry. The staff of the Licensee engaging or participating in Lending shall facilitate such inspection or examinations during regular business hours by giving reasonable aid to the Authority and to any properly authorized officer or employee.

**4.13 Annual Budget.** The Authority shall prepare an annual operating budget for all Authority activities and present it to the Tribal Council no less than thirty (30) days prior to the commencement of each operating year or part thereof.

**4.14 Authority Regulations.**

(a) Regulations necessary to carry out the implementation and orderly performance of the Authority's duties and powers shall include, but shall not be limited to, the following:

(1) The making of findings or other information required by or necessary to implement this Ordinance; and

(2) Interpretation and application of this Ordinance, as may be necessary to enforce the Authority's duties and exercise its powers;

(3) A regulatory system for overseeing Lending, including accounting, contracting, management and supervision;

(4) The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Authority authorized by this Ordinance.

(b) Regulations promulgated by the Authority shall become effective in thirty



(30) days from the date of the promulgation unless the Tribal Council, by resolution, rescinds the regulation. The Authority shall provide copies of the regulation to the Tribal Council and all licensees as soon as practicable. A regulation promulgated by the Authority may take effect earlier than the thirty-day period in exigent circumstances, upon approval by resolution of the Tribal Council.

**4.15 Reports to the Tribal Council.** The Authority shall file verbal or written reports with the Tribal Council as the Tribal Council may require to keep the Tribal Council fully informed as to the status of the Authority's activities.

**4.16 Due Process; Notice; Hearings; Examiner.** At its sole expense, the Authority shall provide notice and the opportunity for a hearing comporting with notions of due process if it is to utilize any of its enforcement capabilities in the administration of its powers and duties set forth in Sections 5.1 (f) and (g).

(a) No Hearing, Voluntary Resolution. Whenever it shall appear to the satisfaction of the Authority that all of the interested parties involved in any dispute or concern have agreed concerning the matter at hand, the Authority may dismiss or approve resolution of the issue, as appropriate, without a hearing.

(b) Notice of Hearing. The Authority shall, within ten (10) days after learning of the event giving rise to the concern, provide a written notice setting forth, with specificity, the issues to be resolved and the date and time at which a hearing shall be conducted.

(c) Hearing. The hearing shall be scheduled to take place no less than ten (10) days and no more than thirty (30) days after the notice of hearing is delivered. For good cause, the Authority or its Examiner shall have the discretion to extend the deadline for completion of the hearing to a total of sixty (60) days following the notice of a hearing. At the hearing, the affected parties shall be provided the opportunity to present oral or written testimony to all people interested therein as determined by the Authority.

(d) Examiner. The Authority's Agent or its designee shall act as examiner for the purpose of holding any hearing, or the Agent may appoint an examiner qualified in the law or possessing knowledge or expertise in the subject matter of the hearing for the purpose of conducting any hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Authority under this Ordinance with respect to any such hearing.

(e) Decision. The Authority shall issue a written decision to all affected parties within thirty (30) days after the hearing.

(f) Appeals. Affected parties may appeal an Authority determination by initiating the dispute resolution provisions set forth in Section Ten.



## SECTION 5. LICENSES

### 5.1 License Required.

- (a) Applicability. Every Person desiring to transact the business of Lending as a Lender, Vendor or Financial Backer within the Tribe's jurisdiction shall be required to obtain a one-year license under this Ordinance. A separate License is not required for each location that the Licensee operates, but each location must be approved in advance by the Authority. Licensee shall post its License at each location where Lending is conducted or, if the location is a website, said License shall be posted electronically on each website.
- (b) Application and Fee. An Applicant for a License shall submit to the Authority an Application, signed under oath, on forms prescribed by the Authority. The forms shall contain such information as the Authority may prescribe, including, but not limited to:
- (1) Evidence supporting the Applicant's financial condition and history, or all necessary information for the Authority to obtain the Applicant's financial condition and history;
  - (2) The qualifications and business history of the Applicant and of its officers, directors, or members, including disclosure of whether such Person has had a previous contractual relationship with an Indian tribe;
  - (3) Whether the Applicant or any of its officers, directors, or members have ever been convicted of or held liable for any: (i) misdemeanor crime involving fraud or violation of law governing the provision of Lending services, or any business of a similar nature; or (ii) any felony crimes; or (iii) civil suits in which a judgment has been entered or to which was entered a plea of no contest. Applicant shall provide a complete disclosure of any pending or anticipated civil or criminal action filed against the Applicant in any jurisdiction. The Applicant shall provide written permission giving the Authority and its Agents the right to investigate the Applicant's background, including any criminal record;
  - (4) Whether the Applicant or any of its officers, directors, or members have ever been permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of a Lending services business or any business of a similar nature;
  - (5) A description of the Applicant's proposed method of doing business;
  - (6) A list of all other licenses for which the Applicant has ever applied to

the Authority, whether or not such licenses were issued;

(7) The Applicant's tax identification number; and

(8) A sworn statement that if the Applicant receives a License it will submit to the Tribe's jurisdiction and will abide by all applicable Tribal and Federal laws, regulations, and policies and further swears that the information contained in the Application is true and correct to the best of Applicant's knowledge.

(9) Each License Application shall be accompanied by a nonrefundable Application fee, the amount of which shall be set by the Authority.

(c) Annual Fees. Upon approval, the Applicant shall pay a License fee in an amount established by the Authority. No abatement in the amount of said License fee shall be made if the License is surrendered, canceled or revoked prior to the expiration of the period for which such License was issued.

(d) Issuance of License.

(1) Upon the filing of an Application for a License, if the Authority shall find that the financial responsibility, experience, character and general fitness of the Applicant, with the employees, officers and directors thereof are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purpose of this Ordinance, the Authority shall thereupon issue a License to transact business in accordance with this Ordinance.

(2) If the Authority shall not so find, the Authority shall not issue such License and the Authority shall notify the Applicant of the denial, give notice of the grounds for refusal and notify the Applicant of the right to request a hearing. No License issued by the Authority shall be transferable or assignable.

(3) A License grants permission from the Authority to an Applicant to conduct Lending or to be a Vendor or Financial Backer to a tribally authorized lending entity. A license is a revocable privilege and does not confer authorization for the Person to conduct business on behalf of or with the Tribe, or to act on behalf of the Tribe, its officials, departments, boards, commissions, or business entities.

## **5.2 Renewals; Suspension, Revocation or Surrender of License.**

(a) Renewal of License. Every holder of a License or a renewal thereof, as provided for in this section, desiring to continue the transaction of the Lending



business as provided for in this Ordinance, shall at least ninety (90) days prior to the expiration of such License or renewal thereof make Application to the Authority on forms to be provided by the Authority for a License renewal. Such License renewal shall be approved or disapproved based on the same factors as set forth in subsection 5.1(d) above and Licensee shall be notified by the Authority of its decision within forty-five (45) days of Licensee's filing of its renewal Application.

(b) Suspension, Revocation or Surrender of License. The Authority may suspend or revoke any License issued hereunder if the Authority shall find that:

- (1) The Licensee has willfully and repeatedly violated any provision of this Ordinance or any order made by the Authority under and within the authority of this Ordinance.
- (2) Any fact or condition exists which, if it had existed at the time of the original Application for such License, would have warranted the Authority in refusing originally to issue such License.
- (3) The Licensee has engaged in business activities or practices in connection with extensions of credit to Borrowers, which are found to be inherently unfair or deceptive. Such activities and practices include, but are not limited to, the use of tactics that mislead the consumer, misrepresent the Borrower transaction or any part thereof or otherwise create false expectations on the part of the Borrower.
- (4) Any Licensee may surrender its License at any time effective immediately by delivering to the Authority such License together with written notice that it thereby surrenders such License.

(c) Acts of Controlling Persons. It is sufficient cause for denial, suspension or revocation of a License if an officer, director, partner, employee or controlling person of the Licensee or Applicant acted or failed to act in a manner that if the Licensee or Applicant acted or failed to act in that manner would be cause for denial, suspension or revocation of the License. For purposes of this Subsection, "controlling person" means a person who owns more than twenty-five percent (25%) equity interest in the Licensee or who has the ability to affect one or more significant business decisions of the Licensee or Applicant.

### 5.3 Enforcement.

(a) Enforcement Authority.

- (1) Jurisdiction. Except as provided otherwise in this Ordinance, the Authority shall have jurisdiction over all violations of this Ordinance and with respect to any conduct governed in this Ordinance or with

respect to any claim arising from a transaction subject to this Ordinance.

- (2) Guidelines. In imposing any administrative remedy or civil penalty provided for in this Ordinance, the Authority shall take into account the appropriateness of the remedy or penalty with respect to the size of the financial resources and good faith of the Lender or Person charged, the extent to which the violation was intentional, the gravity of the violation, the history or previous violations, and such other matters as justice may require.
- (3) Action on License. To discipline any Licensee engaging or participating in Lending or other acts in violation of this Ordinance by ordering immediate compliance, issuing fines and sanctions, and suspending or revoking any License. If a Person fails to pay fines and sanctions, the Authority may impose a lien in the amount of such fine and costs upon all assets and property of such Person within the jurisdiction of the Tribe and may be recovered in a civil action by the Authority. Failure of the Person to pay such fine and costs shall constitute a separate violation of the Ordinance. The Authority may vacate or modify an order if it finds that the conditions, which caused its entry, have changed or that it is otherwise in the public interest to do so.
- (4) Cease and Desists. If the Authority believes that any Lender has engaged in or is about to engage in any act or practice constituting a violation of the Ordinance or regulations promulgated thereunder, or of any federal laws, the Authority may issue a cease and desist order and therein provide the violator an opportunity to cure the violation. The Authority may vacate or modify an order if it finds that the conditions, which caused its entry, have changed or that it is otherwise in the public interest to do so.
- (5) Civil Violations. Any Lender or Person who violates or fails to comply with any provision of this Ordinance or who fails or neglects to comply with any final order of the Authority may be charged with a violation. If the Lender or Person is found to have committed a violation, he/it may be required to pay a civil fine to the Authority not to exceed an amount of which shall be set by the Authority for each violation. Each day during which any such violation or failure to comply continues may be treated as a separate violation of this Ordinance, but not to exceed an amount to be set by the Authority. A violation or series of violations related to the same act or omission may be treated as one violation. All civil fines accruing under this Ordinance shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment,



penalty, forfeiture or damages nor bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Lender or any other Person.

- (b) Dispute Resolution. Any Applicant or Licensee may dispute the denial, suspension, revocation or surrender of a license as well as final enforcement actions and attendant fines, pursuant to the Dispute Resolution Provisions set forth in Section 4.16 and Section 10.
- (c) Lawful Contracts. The revocation, suspension or surrender of a License shall not constitute a basis for contract termination by the Licensee.
- (d) Force and Effect. Every License issued hereunder shall remain in force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this Ordinance, but the Authority shall have authority to reinstate a suspended License or to issue a new License to a Licensee whose License shall have been revoked if no fact or condition then exists which would have warranted the Authority's revocation of such License under this Ordinance.
- (e) Written Order. Whenever the Authority shall revoke or suspend a License issued pursuant to this Ordinance the Authority shall forthwith execute a written order to that effect. The Authority shall forthwith serve the written order upon the Licensee.

#### **5.4 Retention of Book and Records; Annual Reports; Audits.**

- (a) Retention of Books and Records by Licensee. All books, accounts and records of the Licensee shall be preserved and kept available as provided in this Ordinance for a period of at least six (6) years.
- (b) Annual Reports. Every Licensee shall file an annual report with the Authority in a time and manner specified by the Authority. Each report shall contain information specified by the Authority sufficient for the Authority to determine compliance with this Ordinance including, at a minimum, the following:
  - (1) The name, address and telephone number of the Licensee;
  - (2) The names, addresses and titles of all of the key employees of the Licensee;

(3) A sworn statement that the Licensee, to the best of its knowledge, has complied and will continue to comply with all laws of the Tribe and federal laws applicable to Lending services; and

(4) The name and address of the agent who will accept service of process on behalf of the Licensee.

(c) Audit Requirements. The Authority may, in its discretion, require licensed lenders to have audited financial statements prepared, with copies provided to the Tribal Lending Regulatory Authority..

## SECTION 6. AUTHORIZED LENDING

**6.1 Authorized Lending.** A Lender with a License in good standing may enter into closed end, short term consumer loans, as set forth in Section 7 and consumer revolving accounts, as set forth in Section 8.

### 6.2 Trust Lands.

(a) No loan shall be made unless the Lender has received an electronic signature by the Borrower acknowledging that it has traveled via the Internet to the Trust lands of the Guidiville Band of Pomo Indians and that all material aspects of the transaction are occurring on Trust Lands.

(b) The Authority may promulgate regulations and/or establish a process that requires the Lender to obtain certification from the Authority that all material aspects of the transaction are occurring on Trust Lands. In such event, the regulations promulgated by the Authority and the decision(s) of the Authority shall be given deference in any dispute resolution forum unless arbitrary, capricious and or contrary to law.

(c) The Lender shall maintain its headquarters, principal place of business and office on Trust Land as defined in subsection 2.1.

(d) The Lender shall use a computer system accessed by a server located on Trust Lands, and such server may be accessed by the Internet.

(e) Lending transactions authorized by this Ordinance shall be deemed to take place where a Lender's server is located on Trust Lands, regardless of the Borrower's physical location when accessing the Internet for purposed of obtaining a loan.

**6.3 Maximum Interest Rate.** In no event may the maximum rate (inclusive of interest and fees) on loans authorized by this Ordinance exceed the rate of nine-hundred percent (900 %) per year.



#### **6.4 Licensed Lenders and Employees.**

- (a) Attributes. Only those businesses chartered and wholly-owned and operated by the Tribe may be a licensed Lender. In providing lending services under this Ordinance, the Lender shall function as an arm of the Tribe. As a governmental subdivision of the Tribe, the Lender is under the direction and control of the Tribal Council, and it is the purpose and intent of the Tribal Council that the operations of the Lender be conducted on behalf of the Tribe for the primary benefit and interests of the Tribe, its members and residents of and visitors to the Tribe's Trust Land.
- (b) Sole Proprietary Interest. The Tribe shall have sole proprietary interest in any and all Lenders authorized to provide lending services under this Ordinance. Lender may enter into binding agreements with Vendors and Financial Backers, but in doing so, Lender lacks the capacity to transfer any proprietary interests in the Lender to third parties. Lender may enter into consulting agreements, but in doing so, Lender lacks the capacity to transfer management decision-making authority of Lender to third parties.
- (c) Employees and Official Agents. Lender employees acting within the scope of their employment, and Vendors and Financial Backers lawfully acting in the performance of their contractual obligations to the Tribe, are official agents of the Tribe.

#### **6.5 Sovereign Immunity of the Lender.**

- (a) Immunity from Suit. Nothing in this Ordinance shall constitute, and shall not be construed or interpreted to constitute, a waiver of sovereign immunity of the Tribe, or a licensed Lender as to any act or omission of the Tribe or a Lender as expressly provided for. The Tribe possesses and is legally entitled to sovereign immunity whether or not within the scope of this Ordinance. By adoption of this Ordinance, the Tribe does not waive the its sovereign immunity in any respect, and only authorizes a waiver of a duly licensed Lender's sovereign immunity within the narrow set of circumstances expressly provided in subsection 6.5(d) and 10.1(c) and (d).
- (b) Subpoenas and Summons. Summons and subpoenas issued by any entity other than the United States District Court or Tribal Court to be served on the Tribe, including the Lender, are void. The Lender has no capacity to accept service of process of such summons or subpoenas.
- (c) No Consent to Jurisdiction. Nothing in this Ordinance shall be deemed or construed to be a consent of the Lender to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Authority.
- (d) Waiver of Sovereign Immunity of the Lender. Except as provided for in

subsection 10.1(c), the sovereign immunity of the Lender may be waived only by express, written resolution of the Tribal Council.

- (1) Resolution Effecting Waiver. All waivers of sovereign immunity must be expressly provided by resolutions of continuing force and effect issued by the Tribal Council.
- (2) Policy on Waiver. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Lender or the Tribe.
- (3) Limited Nature to Waiver. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Lender subject thereto, and the court having jurisdiction pursuant thereto and law applicable thereto.
- (4) Limited Effect of Waiver. Neither the power to sue and be sued provided in subsection 4.11(i), resolution of borrower complaints as provided for in subsection 10.1(c) or (d), nor any express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Lender other than property specifically pledged or assigned, a consent to suit with respect to any land within the exterior boundaries of the Tribe's Trust Land, or a consent to the alienation, attachment or encumbrance of any such land.
- (5) Suit Against Tribe Beyond Lender Voids Waiver. In the event a waiver has been obtained pursuant to this subsection and a lawsuit is filed against the Tribe, its agents and/or officials and/or political subdivisions other than the Lender, such filing automatically and immediately voids the waiver.
- (6) Suit for Class-Action Voids Waiver. In the event a waiver has been obtained pursuant to this subsection 4.5(e) and a lawsuit is filed that as filed or upon motion seeks certification as class-action lawsuit, such filing automatically and immediately voids the Waiver.

**6.6 Federal Consumer Protection Laws.** A Lender shall conduct business in a manner consistent with the consumer protection principles set forth in the federal laws described in this section, but reference to the principles of these laws shall in no manner endorse the application of any enforcement mechanisms or protections described in those laws as against the Lender. The applicable laws are: the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and related regulations at 12 C.F.R. Part 226; Fair Credit Billing Act, 15 U.S.C. § 1666a; Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and related regulations at 15 C.F.R. Part 202; Electronic



Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*, and related regulations at 12 C.F.R. Part 205; Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* and related regulations at 12 C.F.R. Part 222); privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq.*, and related regulations at 16 C.F.R. Part 313 and 16 C.F.R. Part 314; Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and related regulations at 16 C.F.R. Part 901; Talent Amendment, 10 U.S.C § 987, and related regulations of the Department of Defense at 32 C.F.R. part 232; and Servicemembers' Civil Relief Act, 50 U.S.C. App. §§ 501-596. In interpreting all federal laws, any reference to a "state" shall be construed where appropriate to mean the Tribe and shall be construed liberally in favor of the Tribe, with ambiguous provisions interpreted to the Tribe's benefit. Notwithstanding the above, the Tribe, including the Authority and all Lenders, has in no way waived any defenses or position related to the applicability of the above laws to the Tribe or any Lender.

**6.7 Fraud by Borrower.** The Authority and the Lender are each vested with the power to take action to the fullest extent of available laws against a Borrower that provides fraudulent information or otherwise engages in activity intended to defraud or take unfair advantage of the Tribe, including the Authority or Lender, including civil action in the Tribal Court or any other court of competent jurisdiction and including the filing of criminal charges in a non-Indian jurisdiction. The Authority or Lender, by bringing such action, has no authority to waive the Tribe's immunity as to counter-claims.

**6.8 Unfair, Deceptive, and Abusive Practices.** Applicants, Lenders, Licensees, Financial Backers and Vendors are forbidden from engaging in practices, that are considered by the Authority to be Unfair, Deceptive, and Abusive practices.

**6.9 Copy of Ordinance.** The Authority shall provide a copy of this Ordinance and any implementing regulations to every Licensee. Each Lender shall have a copy of this Ordinance and any implementing regulations readily available for inspection by any Person at each physical location of the Lender and shall also be Conspicuously Displayed on each of Lender's websites. The Authority shall provide a copy of this Ordinance to each Licensee.

## SECTION 7. Closed End Short Term Consumer Loans

**7.1 Definitions.** As used in this subsection:

- (a) "Business day" means, with respect to rescission under this Ordinance, all calendar days except Sundays and legal public holidays.
- (b) "Closed End Credit" means the extension of credit by a Lender to a Borrower pursuant to an arrangement or agreement that is not a revolving credit plan.

- (c) "Conspicuously Displayed" means highlighted through the use of capitalization, bold print, underlining or some combination thereof.
- (d) "Loan" means any single extension of closed end credit that is a Short-Term Consumer Loan under this Ordinance.
- (e) "Right of Rescission" means, with respect to any Short-Term Consumer Loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.
- (f) "Rollover" means, with respect to any Short-Term Consumer Loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.
- (g) "Short-Term Consumer Loan" means a loan of \$50.00 to \$5,000 made to a Borrower that charges interest and/or fees for which the stated repayment period is less than three hundred sixty-six (366) days.
- (h) "Workout Agreement" means an agreement between a Borrower and a Lender for the repayment of an outstanding and unpaid indebtedness that requires a net reduction of not less than 10% of such indebtedness per payment period.

**7.2 Extension of Credit.** Any Lender may, subject to any limitations on Lending authority contained in this Ordinance, offer and extend Closed End Credit to a Borrower and, in connection therewith, may charge and collect the interest and other charges permitted by this Ordinance. All Lenders will maintain records or other comparable evidence of their activity taken to reach a decision on a Loan for a period of six (6) years.

**7.3 Interest.** A Lender may charge and collect interest in respect of a Loan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the Loan provides or as established in the manner provided in such agreement and may calculate such interest by way of simple interest or such other method as the agreement governing the Loan provides. If the interest is pre-computed it may be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from 360 to 366 days, including or disregarding leap year, as the Lender may determine.

**7.4 Refinancing.** A Borrower may, with the consent of the Lender, refinance the entire outstanding and unpaid amount of a Loan, and the Lender may charge and collect a refinancing charge in connection with any such refinancing.



**7.5 Short-Term Consumer Loans.** In addition to such other limitations and requirements as are imposed pursuant to other provisions of this Ordinance, Short-Term Consumer Loans shall be subject to the following:

(a) Lenders are subject to the following limitations:

- (1) No Lender shall make more than 10 Rollovers of an existing Short-Term Consumer Loan. A Lender may, following not more than the maximum allowable number of Rollovers, enter into a Workout Agreement with the Borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.
- (2) No Lender shall make a Short-Term Consumer Loan unless such Loan is subject to a Right of Rescission on the part of the Borrower.
- (3) No Lender shall pursue or threaten to pursue criminal action against a Borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.

**7.6 Additional Disclosures.** In addition to the disclosures required in Section 9, Short Term Closed End Consumer Loans shall be subject to the following: No Lender shall enter into a Short Term Closed End Consumer Loan unless the Application for such Loan contains a written disclosure, Conspicuously Displayed, that states:

(a) A statement substantially similar to the following:

**NOTICE: The interest and fees for the Short Term Closed End Consumer Loans are quite high compared to other forms of credit that you may be able to obtain. You should only agree to a Short Term Closed End Consumer Loan if you have considered the costs and benefits of all alternatives, such as going without credit, getting debt counseling and/or getting loans from friends, family members, banks, credit union or other lenders.**

(b) A statement substantially similar to the following:

**NOTICE: At any time, you may prepay all or any part of the amount you owe us without penalty. This will have the effect of reducing the interest you pay.**

(c) Additional fees may accrue if the loan is rolled over; and

(d) Credit counseling services are available to consumers who are experiencing financial problems.

- 7.7 Mandatory Postings.** Every Short-Term Consumer Loan Lender must post in plain view, Conspicuously Displayed, on any of its websites, a schedule of fees and rates applicable to its Loans, and a prominent statement that states: "**A Short-Term Consumer Loan is designed to help consumer borrowers meet their short-term financial emergencies and is not intended to meet their long-term financial needs.**"

## **SECTION 8. Consumer Revolving Account**

### **8.1 Definitions.** As used in this subsection:

- (a) "Account Agreement" means the agreement between a Licensee and Borrower establishing the terms and conditions of a Consumer Revolving Account.
- (b) "Advance" means a cash advance as provided in the Account Agreement that may be obtained from time to time.
- (c) "Billing Cycle" means the monthly cycle between the days of regular periodic statements. A billing cycle period is considered monthly if the closing date of the billing cycle period is the same day each month or does not vary by more than four days from that day.
- (d) "Consumer Revolving Account" means an open end revolving line of credit account that contemplates Advances with a credit limit established from time to time by the Lender, that the Borrower may pay in full at any time but has the privilege of paying in installments.
- (e) "Daily Balance Method" means the method of calculating interest for each day in a Billing Cycle, in which the balance is figured by taking the beginning balance each day, adding any new Advances and permitted charges, and subtracting any payments and credits.

- 8.2 Extension of credit.** Any Lender may, subject to any limitations on Lending authority contained in this Ordinance, offer and extend a Consumer Revolving Account and make Advances to a Borrower and, in connection therewith, may charge and collect the interest and other charges permitted by this Ordinance. All Lenders will maintain records or other comparable evidence of their activity taken on a Consumer Revolving Account for a period of at least 24 months after termination of the right to receive Advances under the Account Agreement.

- 8.3 Interest.** A Licensee may charge and collect interest in respect of Advances on a Consumer Revolving Account at such daily or other periodic percentage rate or rates as the Account Agreement provides. Interest may be a fixed or variable rate as agreed to in the Account Agreement. Interest will be charged on an Advance starting the day the Advance is made. Interest shall be calculated each Billing Cycle using the Daily Balance Method.



- 8.4 Billing Statements.** A Lender shall provide a billing statement to each Borrower within 14 days of the end of each Billing Cycle. A Lender does not have to provide a Billing Statement on a Consumer Revolving Account that is in default and the entire unpaid balance has been accelerated and is due and payable in full.
- 8.5 Minimum Payments.** Minimum payments shall be due weekly, bi-weekly, semi-monthly, monthly, or as otherwise agreed in the Account Agreement. The amount or method of determining the amount of a minimum payment shall be as agreed in the Account Agreement.
- 8.6 Attorney's Fees; Costs.** In the event a Borrower defaults under the terms of a loan agreement, the Lender may, if the Borrower's account is referred to an attorney (not a regularly salaried employee of the Lender), or to a third party for collection, and if the agreement governing, or the bond, note or other evidence of, the loan so provides, charge and collect from the Borrower a reasonable attorney's fee.
- 8.7 Other Charges.** In addition to interest on the unpaid balance, if the Account Agreement provides, the Licensee may charge and collect and include in the unpaid balance of the Consumer Revolving Account, any of the following:
- (a) Monthly Participation Fee
  - (b) An annual or other periodic charge
  - (c) A transaction charge for each Advance
  - (d) A late payment or delinquency charge
  - (e) A dishonored or returned payment charge
- 8.8 Additional Disclosures.** In addition to the disclosures required in Section 9, Account Agreements shall be subject to the following: No Lender shall enter into an Account Agreement unless the Application for such Loan contains a written disclosure, **Conspicuously Displayed**, that states:

- (a) A statement substantially similar to the following:

**NOTICE: The interest and fees for the Line of Credit are quite high compared to other forms of credit that you may be able to obtain. You should only open a Line of Credit if you have considered the costs and benefits of all alternatives, such as going without credit, getting debt counseling and/or getting loans from friends, family members, banks, credit union or other lenders.**

(b) A statement substantially similar to the following:

**NOTICE: At any time, you may prepay all or any part of the amount you owe us without penalty. This will have the effect of reducing the interest you pay.**

**8.9** Every Consumer Revolving Account Lender must post in plain view, Conspicuously Displayed, on any of its websites, a schedule of fees and rates applicable to its Loans, and a prominent statement that: "A Consumer Revolving Account Loan is designed to help consumer borrowers meet their short-term financial emergencies and is not intended to meet their long-term financial needs."

## **SECTION 9. DISCLOSURES AND ACKNOWLEDGEMENTS**

**9.1 Federal Disclosures.** Lenders shall make all solicitation, application, account opening and periodic statement disclosures required by the Federal Truth in Lending Act and its implementing regulations.

**9.2 Electronic Signature.** No loan shall be made unless the Lender has received an electronic signature by the Borrower acknowledging that it has been informed of the disclosures required by this Ordinance.

**9.3 Acknowledgment of Tribal Lands.** No loan shall be made unless the Lender has received an electronic signature by the Borrower acknowledging that it has traveled, via the Internet, to the Trust lands of the Guidiville Band of Pomo Indians and that all material aspects of the loan agreement are occurring on Trust Lands.

**9.4 Acknowledgment of Tribal Law.** No loan shall be made unless the Lender has received an electronic signature by the Borrower acknowledging that the loan transaction are governed solely by this Ordinance, the laws of the Guidiville Band of Pomo Indians and applicable federal laws.

**9.5 Express Consent to Tribal Jurisdiction.** No loan shall be made unless the Lender has received an electronic signature by the Borrower acknowledging that it is expressly consenting to the jurisdiction of the Guidiville Band or Pomo Indians for all purposes relating to the loan.

**9.6 Acknowledgment.** No loan shall be made unless the Lender has received an electronic signature by the Borrower acknowledging that the Lender disclaims any representation of third parties, including entities that may have referred Borrower to Lender, except as consistent with the terms of the loan transaction.



## SECTION 10. DISPUTE RESOLUTION

### 10.1 Complaints by Borrowers.

#### (a) Requirement to Exhaust Informal Resolution.

- (1) Borrowers who, in the course of their otherwise lawful and proper use of a Lender's business, have concerns about any part of the Lender's operation that pertains to the Borrower or who otherwise believe themselves to be aggrieved by some aspect of the operation of any part of the Lender's business, shall first direct their concerns and any dispute to the Lender's management, either orally or in writing.
- (2) Upon receipt of such complaint, the Lender shall expediently notify the Authority of the complaint and expediently gather sufficient facts to make a determination about the dispute. The Lender shall inform the complainant Borrower in writing about its determination as soon as is reasonably practicable. The Lender shall inform the complainant Borrower of the opportunity to dispute the Lender's determination as provided by this Ordinance.

#### (b) Administrative Appeal to the Authority.

- (1) In the event of a Borrower dispute that has moved through the informal resolution process described above, a complainant Borrower who is dissatisfied with a Lender's resolution of their dispute may request review by the Authority by submitting a written request to the Authority within one (1) year after being informed about the initial determination.
  - (A) The Authority shall investigate and review the dispute in any manner that it chooses. In connection with a dispute, the Authority may conduct such review, interviews, sworn statements, depositions, and other means of obtaining desired information as the Authority requests. In each instance, the Lender, complainant, and other interested persons must cooperate with the Authority and must provide such information and documents as the Authority deems necessary or advisable to resolve the dispute.
  - (B) After reviewing and/or investigating (if the Authority chooses) the Borrower dispute, the Authority shall communicate its opinion and any proposed resolution on the complainant Borrower's written request for review in a manner deemed reasonable and appropriate by the Authority.

- (2) If the Borrower accepts the proposed resolution as determined by the Authority, the Lender shall effectuate the proposed resolution.
- (3) If the Borrower does not accept the proposed resolution by the Authority, it may pursue the alternative resolution provisions set forth in subsection 10.1(c) below or proceed to an appeal in Tribal Court as provided for in subsection 10.1(d).

(c) Borrower's Option of Alternative Dispute Resolution,

- (1) The Borrower may elect to have the dispute resolved by means of binding arbitration pursuant to either AAA or JAMS, in which event the Lender shall consent to binding arbitration and in which event the applicable rules of AAA or JAMS shall govern the arbitration, including the selection of the arbitrator(s).
- (2) In the event arbitration is elected by the Borrower, the arbitrator or arbitration panel, the Tribe delegates to the arbitrator the authority to determine the legality and enforceability of the arbitration.
- (3) Application of Other Laws. Any federal law not applicable to Indian Tribes or state law limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit under a loan operated in accordance with this subsection.
- (2) Nothing herein is intended to exclude the possibility of the Borrower and to pursue other means of alternative dispute resolution, including but not limited to mediation and non-binding arbitration.

(d) Appeal to Tribal Court.

- (1) The Tribe shall become a member of a recognized intertribal court system such as Intertribal Court of Southern California or Northwest Intertribal Court System.
- (2) A Borrower may appeal the proposed resolution of the Authority directly to the Tribal Court, in which event the Tribal Court shall have de novo review over the dispute. The Borrower may appeal the decision to the Tribal Appeals Court. A final judgment of the Tribal Court shall be non-appealable. The Lender is precluded from waiving its immunity for further appeals to federal or state courts.
- (3) A Borrower that has elected binding arbitration may file an action in Tribal Court for the limited purposes of enforcing the arbitration



award.

- (4) In no event shall the Tribal Court have jurisdiction or authority to award punitive damages, attorneys' fees, or otherwise expand recourse beyond the assets of the Lender.

(e) Convenience of the Forum for Borrower.

- (1) The Borrower shall not be responsible for any costs or fees (except their own attorney fees) incurred for its pursuit of the remedies provided by this Ordinance.
- (2) The Borrower may appear in any and all stages of the dispute resolution process pro se, or may choose to be represented by an attorney or non-lawyer, as it chooses. The Lender, however, shall not be responsible for fees incurred by the Borrower in retaining third-party representation.
- (3) To the fullest extent practicable, at all stages of the dispute resolution process, at the request of Borrower, proceedings shall be convened by teleconference or through the Internet.

**10.2 Complaints by Lenders, Vendors, Financial Backers and License Applicants.**

(a) Requirement to Exhaust Informal Resolution.

- (1) Lenders, Vendors, Financial Backers or License Applicants, who dispute any action taken by the Authority, shall seek to resolve the matter informally with the Authority.
- (2) Upon receipt of such complaint, the Authority shall expediently gather sufficient facts to make a determination about the dispute and attempt to resolve the matter informally to the satisfaction of the Lenders, Vendors, Financial Backers or License Applicants.

(b) Administrative Appeal to the Authority.

- (1) In the event of a dispute that has moved through the informal resolution process described above, Lenders, Vendors, Financial Backers or License Applicants, who are dissatisfied with the Authority's resolution of their dispute may request a formal hearing by the Authority by submitting a written request to the Authority within thirty (30) days after being informed about the initial determination.
- (2) The Authority, in its discretion, may designate a third-party to conduct the Hearing and render a decision.

- (3) The Hearing shall be conducted promptly and provide an opportunity for the Lender, Vendor, Financial Backer or License Applicant to be heard with any and all information the Lender, Vendor, Financial Backer or License Applicant believes is relevant to the inquiry.
- (4) An Administrative Record shall be prepared including all testimony and evidence provided by both the Authority and the Lender, Vendor, Financial Backer or License Applicant.
- (5) After the Hearing, the Authority or its designees shall make specific findings of fact and conclusions of law, and decide the manner in which the dispute is to be resolved.
- (6) If the Lender, Vendor, Financial Backer or License Applicant does not accept the proposed resolution by the Authority, it may appeal in Tribal Court pursuant to subsection 10.2(d) above.

(f) Appeal to Tribal Court.

- (1) The Tribe shall become a member of a recognized intertribal court system such as Intertribal Court of Southern California or Northwest Intertribal Court System.
- (2) A Lender, Vendor, Financial Backer or License Applicant may appeal the decision of the Authority directly to the Tribal Court, in which event the Tribal Court shall affirm the decision of the Authority unless upon review of the Administrative Record, it determines that the Authority acted in an arbitrary and capricious manner or contrary to law. The Lender, Vendor, Financial Backer or License Applicant may appeal the decision to the Tribal Appeals Court. A final judgment of the Tribal Court shall be non-appealable. The Authority is precluded from waiving its immunity for further appeals to federal or state courts.
- (3) The Tribal Court's jurisdiction as against the Authority is expressly limited to prospective equitable relief directing the Authority to take action to come into compliance with the Ordinance. In no event shall the Tribal Court have jurisdiction or authority to money damages punitive damages, attorneys' fees, or otherwise expand recourse beyond prospective equitable relief.

**10.3 Prohibition Against Class Action.** Under no circumstances shall the Tribal Court have jurisdiction to hear a class-action lawsuit pursuant to this Ordinance or any other authority of the Tribe. In the event any Borrower, Lender, Financial Backer, Vendor or License Applicant seeks a class-action lawsuit in Tribal Court or any other venue, such action shall have the automatic and immediate effect of



voiding all recourse provided by this Ordinance and voiding any and all limited waivers of sovereign immunity that may otherwise apply.

### CERTIFICATION

This is to certify that this GUIDIVILLE INDIAN RANCHERIA TRIBAL LENDING REGULATORY ORDINANCE # 10-1 was amended at a special meeting of the Guidiville Band of Pomo Indians Tribal Council on July 12, 2018, at which a quorum was present by a vote of 2 "For," 0 "Opposed," and 0 "Abstentions." This Ordinance has not been rescinded in any way.

**DATED THIS 12th DAY OF July 2018.**



Merlene Sanchez, Chairperson  
Guidiville Indian Rancheria

ATTEST:



Donald Duncan, Vice Chairperson and Acting Secretary  
Guidiville Indian Rancheria

  
Guidiville Indian Rancheria