April 9, 2009

VIA FACSIMILE & U.S. MAIL

Donald Tofpi, Chairman
Kiowa Tribe of Oklahoma
P.O. Box 369
Carnegie, OK 73015
Fax: 580-654-2972

RE: Amendment to the Amended and Restated Kiowa Gaming Ordinance

Dear Chairman Tofpi:

This letter responds to your request that the Chairman of the National Indian Gaming Commission (NIGC) review and approve the amendment to the Amended and Restated Kiowa Gaming Ordinance of 2005 (Gaming Ordinance) passed on February 12, 2009, under Resolution CY-2009-364. The amendment changes the appointment terms of the tribal gaming commissioners and makes the seats vacant and refillable under the Tribe's laws. The NIGC received this amendment on March 30, 2009.

This letter constitutes approval of the amendment because nothing therein conflicts with the requirements of the Indian Gaming Regulatory Act (IGRA) and the Commission's regulations.

I must take this opportunity, however, to state that this approval does not indicate approval for any other resolution presented to the NIGC on March 30, 2009. This approval only extends to the action taken by the Business Committee to amend the gaming ordinance. The NIGC only reviews resolutions that affect IGRA requirements, such as a resolution amending a tribal gaming ordinance. The NIGC does not hereby opine on any other resolutions presented to us, nor does it opine on the reasoning presented in any of those resolutions. It is only the action taken in Resolution CY-2009-364 that requires my review and only that action that I will approve as compliant with IGRA.

Thank you for submitting the amendment for review and approval. If you have any questions, please contact Staff Attorney Rebecca Chapman at (202) 632-7003.

Sincerely,

Philip N. Hogen
Chairman

Kiowa Tribe of Oklahoma

P.O. Box 369 · Carnegie, Oklahoma · 73015
Phone: (580) 654-2300 · Fax: (580) 654-2188

KIOWA BUSINESS OFFICE

March 24, 2009

MAR 30 2009

33009-40

National Indian Gaming Commission
Attention: Phil Hogen, Chairman
1441 "L" Street NW
Suite 9100
Washington, DC 20005

RE: The Amended and Restated Kiowa Gaming Ordinance of 2005

Dear Chairman Hogen:

The Kiowa Business Committee has amended certain particulars to the Amended and Restated Kiowa Gaming Ordinance of 2005. The amendment was done through resolution CY-2009-364, passed on February 12, 2009, during a special meeting of the Kiowa Business Committee.

The amendment addresses the extended terms of office of the incumbent Kiowa Gaming Commissioners as set forth in the current ordinance. Please accept our submittal for approval of the National Indian Gaming Commission.

We are also forwarding resolutions that pertain to the newly appointed Kiowa Gaming Commission and Mr. Thomas Fricke, as follows:

Resolution CY-2009-348	Thomas Fricke
Resolution CY-2009-349	Thomas Fricke
Resolution CY-2009-355	KGC Appointment
Resolution CY-2009-361	KGC Appointment
Resolution CY-2009-362	Newly Appointed KGC Empowerment
Resolution CY-2009-363	Newly Appointed KGC Authorization
Resolution CY-2009-368	Alleged KGC Removal from Office
Resolution CY-2009-381	KGC Appointment
Resolution CY-2009-382	KBC Support of the Newly Appointed KGC

Should you need any other information, please contact the Kiowa Business Office at (580) 654-1729.

Sincerely,

Donald G. Tofpi, Chairman
Kiowa Tribe of Oklahoma

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2009 MAR 30 PM 4:58

Kiowa Tribe of Oklahoma

P.O. Box 369 · Carnegie, Oklahoma · 73015
Phone: (580) 654-2300 · Fax: (580) 654-2188
Kiowa Business Office

RESOLUTION NO. CY-2009-364

RESOLUTION OF THE KIOWA BUSINESS MEETING AMENDING IN CERTAIN PARTICULARS THE AMENDED AND RESTATED KIOWA GAMING ORDINANCE OF 2005, AND SUBSEQUENT AMENDMENTS THERETO, AND FOR OTHER PURPOSES

WHEREAS, the Kiowa Indian Tribe of Oklahoma (the "Tribe') is a sovereign nation and from time immemorial has been a sovereign nation; and

WHEREAS, the Tribe is federally recognized by the Secretary of the Interior of the United States as having powers of self government and as being eligible for the special programs and services provided by the United States to Indians, and its sovereignty is thereby recognized by the United States, all as evidenced by order of the Associate Commissioner of Indian Affairs, dated March 13, 2070, approving the constitution and bylaws of the Tribe (the "Constitution"); and

WHEREAS, pursuant to the Constitution and specifically pursuant to Article V, section 2, the Tribe has delegated to its elected representatives, the Business Committee ("Business Committee"), the responsibility and authority to take all necessary action to promulgate and enforce ordinances and codes to protect the general welfare of the Tribe and its members; and

WHEREAS, pursuant to Ballot Issue 94-A-5, passed on the 18th day of June, 1994, the Kiowa Indian Council authorized the Kiowa Business Committee to develop and enact a Gaming Ordinance to authorize, license and regulate Class II and Class III gaming on Tribal Land of the Kiowa Indian Tribe of Oklahoma; and

WHEREAS, by Resolution No. CY-95-39 and CY-95-40, both dated June 26, 1995, the Business Committee, acting pursuant to the aforesaid delegated power, enacted resolutions to approve and adopt the Kiowa Indian Tribe of Oklahoma Gaming Ordinance of 1995 and the Kiowa Indian Tribe of Oklahoma Gaming Facility Bonding Ordinance of 1995 (together, as amended, the "Indian Gaming Ordinance"); and

WHEREAS, as required under Federal law, the Initial Gaming Ordinance was approved by the Chairman of the National Indian Gaming Commission (the "NIGC"), as indicated by that Chairman's publication of a notice of approval of Class III tribal gaming ordinances, in Volume 61, Federal Register, page 31963, on Friday, June 21, 1996; and

WHEREAS, on July 21, 2001, by Resolution No. CY-2001-045, the Business Committee exercised its authority, as delegated to it by the Kiowa Indian Council and by the Constitution, to amend, in accordance with Article XIV of the Initial Gaming Ordinance, in certain particulars, the Initial Gaming Ordinance; and

WHEREAS, by letter dated September 7, 2001, the NIGC granted its approval of the amendment to the Initial Gaming Ordinance; and

WHEREAS, the initial appointment of Commissioners by the Kiowa Business Committee was made pursuant to Kiowa Business Committee Resolution No. CY-2001-045, dated the 12th day of July, 2001, and established the Kiowa Gaming Commission which consists of four (4) members with terms of office as follows:

(a) Tribal Chairman;
(b) First Commissioner whose term is seven (7) years and whose term expires on May 31, 2008;
(c) Second Commissioner whose term is for six (6) years and whose term expires on May 31, 2007; and
(d) Third Commissioner whose terms is five (5) years and whose term expires May 31, 2006; and

WHEREAS, by Resolution No. CY-2005-160, dated the 15th day of February, 2005, the Kiowa Business Committee approved a document entitled Amended Gaming Ordinance and the same was approved by NIGC. Said Ordinance did extend the terms of office of the incumbent Commissioners of the Kiowa Gaming Commission beyond the initial terms of appointment made by the Kiowa Business Committee on the 13th day of July, 2001 and by Kiowa Business Committee Resolution No. CY-2001-045, and reduced the number of Commissioners to three (3) thereby deleting the Tribal Chairman as a member of the Commission; and

WHEREAS, by Resolution No. CY-2005-176, dated September 3, 2005, the Business Committee further exercised its power of amendment of the Initial Gaming Ordinance, by promulgating the Amended and Restated Gaming Ordinance of 2005 (the "Gaming Ordinance of 2005") and maintained the extended terms of the Gaming Commissioner as set forth in Kiowa Business Committee Resolution No. CY-2001-160; and

WHEREAS, pursuant to Federal law, on September 8, 2005, the Chairman of the NIGC approved the Amended and Restated Gaming Ordinance of 2005; and

WHEREAS, it has come to the attention of the Kiowa Business Committee that the extended terms of office of the incumbent Commissioners as set forth in

the Amended Gaming Ordinance and the Amended and Restated Gaming Ordinance of 2005 was entered and promulgated by the Kiowa Business Committee through mistake and inadvertence; and

WHEREAS, the minutes of a Special Kiowa Business Committee meeting held on the 13th day of July, 2001, show that Steve Littleman, Walter Kaulaity and Herbert Redbird were appointed to the office of Commissioners of the Kiowa Gaming Commission but no designation in said Minutes as to which position each was appointed or capacity to serve in, nor is the term of office for each appointee specified; and

WHEREAS, the Kiowa Election Board did, on the 7th day of December, 2001, pursuant to Article XI of the Constitution of the Kiowa Tribe of Oklahoma, swear in Walter Kaulaity as a Gaming Commissioner and did specify that the term of Walter Kaulaity's office as Commissioner of the Kiowa Gaming Commissioner expired and was completed in the year 2008; and

WHEREAS, the Kiowa Election Board did, on the 7th day of December, 2001, pursuant to Article XI of the Constitution of the Kiowa Tribe of Oklahoma, swear in Steve LIttleman as a Gaming Commissioner and did specify that the term of Steve Littleman's office as Commissioner of the Kiowa Gaming Commissioner expired and was completed in the year 2007; and

WHEREAS, the Kiowa Election Board did, on the 7th day of December, 2001, pursuant to Article XI of the Constitution of the Kiowa Tribe of Oklahoma, swear in Herbert Redbird as a Gaming Commissioner and did specify that the term of Herbert Redbird's office as Commissioner of the Kiowa Gaming Commissioner expired and was completed in the year 2006; and

WHEREAS, the incumbent Commissioners have not satisfied the mandatory provisions of Article XI, Constitution of the Kiowa Tribe of Indians of Oklahoma by taking the Oath of Office for Commissioner of the Kiowa Gaming Commission for any term of office past the dates specified on each respective Oath of Office as Commissioner of the Kiowa Gaming Commission, as set forth above, and the three (3) offices of Commissioner of the Kiowa Gaming Commission are declared vacant and subject to being filled by appointees selected by the Kiowa Business Committee in accordance with the Amended and Restated Kiowa Gaming Ordinance, Laws of the Kiowa Tribe of Oklahoma, and the Constitution and By-laws of the Kiowa Tribe of Oklahoma; and

WHEREAS, the failure of the incumbent Gaming Commissioners, namely Walter Kaulaity, Steve Littleman and Herbert Redbird to take the mandatory Oath of Office mandated by Article XI, Constitution and By-Laws of the Kiowa Tribe of Oklahoma prior to assuming their duties as Commissioners of the Kiowa Gaming Commission has caused each of them to be unlawfully

holding their respective office of Gaming Commissioner, and as a result thereof, said Walter Kaulaity, Steve Littleman and Herbert Redbird are not lawfully appointed or seated Gaming Commissioners of the Kiowa Gaming Commission; and

WHEREAS, the Kiowa Business Committee has been advised that there no longer exists any necessity for the continued existence of Paragraph 12 (Regulations) of the Article 8, Section 1, Paragraphs g and h of the Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance of 2005 wherein the Powers and Duties of the Commissioners of the Kiowa Gaming Commission was expanded to authorize the creation of Emergency Rules and Regulations and that Kiowa Business Resolution No. CY-2007-716, at page five (5) should be rescinded as the same relates to the creation of the authority of the Kiowa Gaming Commission to enact Emergency Rules and Regulations and that Paragraph 12 (Regulations) of Article 8, Section 1, Paragraphs g and h of the Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance of 2005 should be repealed.

NOW, THEREFORE IT BE AND IT IS HEREBY RESOLVED that Article Eight (8), subparagraph (c), Initial Appointment of Commissioners, of the Amended and Restated Gaming Ordinance of the Kiowa Tribe of Oklahoma be and the same is hereby amended to read as follows:

(c) Initial appointment of Commissioners. Upon the effective date of this Ordinance hereby amending the Amended and Restated Gaming Ordinance, the first appointment of Commissioners shall be for terms as follows:

1. First Commissioner appointed by the Kiowa Business Committee, for a term of approximately seven (7) years to expire May 31, 2008; the Second Commissioner, as appointed by the Kiowa Business Committee for a term of approximately six (6) years to expire on May 31, 2007; and the Third Commissioner as appointed by the Kiowa Business Committee, for a term of approximately five (5) years to expire on May 31, 2006. All the terms of the incumbent Commissioners namely Walter Kaulaity, Steve Littleman and Herbert Redbird, have expired The offices of all three (3) Commissioners as above defined are declared vacant, and are subject to being filled by the Kiowa Business Committee pursuant to the terms and conditions of this Amended and Restated Gaming Ordinance, laws of the Kiowa Tribe of Oklahoma and the Constitution and By-Laws of the Kiowa Tribe of Oklahoma.

AND BE IT FURTHER RESOLVED, that Kiowa Business Committee Resolution No. CY-2007-716, at page five (5) thereof, is rescinded only to those provisions granting the Commissioners of the Kiowa Gaming Commission, the power and authority to create Emergency Rules and Regulations and Paragraph 12 (Regulations) of Article 8, Section 1, Paragraphs g and h, Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance of 2005, creating the authority of the Kiowa Gaming Commission to enact Emergency Rules and Regulations is hereby repealed;

AND BE IT FURTHER RESOLVED, that as herein amended, the Amended and Restated Gaming Ordinance is hereby ratified and confirmed;

AND BE IT FURTHER RESOLVED, that to the extent that any ordinance, regulation, policy or practice of the Kiowa Tribe is inconsistent with this Resolution hereby enacted, such ordinance, regulation, policy or practice is hereby superseded and repealed;

AND BE IT FURTHER RESOLVED, that the Tribal Chairman and the Tribal Secretary be and they are hereby authorized and directed to submit this Resolution together with the Gaming Ordinance to the National Indian Gaming Commission for approval as required by and pursuant to Title 25 Code of Federal Regulations, Section 522.1—522.12 inclusive and to the Assistant Secretary for Indian Affairs or his authorized representative, pursuant to Article V, Subsection 2(g) of the Tribal Constitution;

AND BE IT FURTHER RESOLVE, that the foregoing becomes effective on the date on which it is approved by NIGC Chairman pursuant to those regulations and by Assistant Secretary for Indian Affairs or his authorized representative, pursuant to Article V, Subsection 2(g) of the Tribal Constitution ("effective date");

AND BE IT FURTHER RESOLVED, that promptly following the effective date the Tribal Business Committee be and hereby authorized and directed to make the appointments to the Gaming Commission pursuant to the Gaming Ordinance as hereby amended;

AND BE IT FURTHER RESOLVED, that any part of these resolutions be found by a court of competent jurisdiction to be inconsistent with the Tribal Constitution then only that part found to be so inconsistent shall be void an of no effect (but only to the extent of such inconsistency), and all other parts of this Resolution shall remain in full force and effect.

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CERTIFICATION

The foregoing Resolution No. **CY-2009-364** was duly adopted at a **Special** Kiowa Business Committee meeting, held on **February 12, 2009,** at the Kiowa

Tribal Complex, located in Carnegie, Oklahoma, with majority vote of **(4)** for, **(0)** against and **(0)** abstentions, a quorum being present.

ATTEST:

Sharon Pena

Sharon Pena, Tribal Secretary

WITNESS:

Donald G. Tofpi, Tribal Chairman