NOTICE OF VIOLATION AND ORDER OF TEMPORARY CLOSURE

Ref. No.: NOV-CO-99-01

JAN 6 1999

VIA FACSIMILE SERVICE PURSUANT TO 25 CFR § 519.3(5)

HARD COPY TO FOLLOW BY CERTIFIED MAIL

To: Henry Kostzuta, Chairman
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, Oklahoma 73005,

Respondent

Houston Klinekole, Acting Gaming Commissioner
Agent for Service of Process
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, Oklahoma 73005

Martin Bitseedy, Chairman, Apache Development Authority
Alternate Agent for Service of Process
Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, Oklahoma 73005

1. Under the authority of 25 U.S.C. §2701 et seq. and 25 CFR Part 573, the Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Na-I-Sha gaming facility located on Indian lands in Anadarko, Oklahoma is ordered to close by 12:00 p.m., Central Standard Time, January 7, 1999. This action is necessary due to violations of 25 C.F.R. §573.6(a)(1)(i) and 25 C.F.R. § 573.6(a)(11) of the regulations of the NIGC as further described below.

2. Pursuant to NIGC regulations, it is a substantial violation to: fail to correct violations within the time permitted in a notice of violation, 25 C.F.R.§ 573.6(a)(1)(i); and to operate class III games in the absence of a tribal-state compact, 25 C.F.R. § 573.6(a)(11).

3. The Chairman hereby gives notice that the Apache Tribe of Oklahoma ("Respondent"), located in Anadarko, Oklahoma, has committed substantial violations as follows:

4. FAILURE TO CORRECT VIOLATION WITHIN TIME PERMITTED IN NOTICE OF VIOLATION

a. The IGRA states that a tribe may engage in gaming if, among other requirements, the tribe submits to the NIGC an annual independent audit report of the gaming operation. 25 U.S.C. § 2710(b)(2)(C) and (d)(2). NIGC regulations require that a tribe cause to be conducted annual independent audits of each gaming operation and submit the results of these audits to the NIGC. 25 C.F.R. § 571.12. Tribes are to submit a copy of the report(s) and management letter(s) setting forth the results of each annual audit to the NIGC within 120 days after the end of each fiscal year of the gaming operation. 25 C.F.R. § 571.13.

b. The Tribe has been operating Na-I-Sha Bingo since 1993. The fiscal year end for Na-I-Sha Bingo is December 31. The Tribe's fiscal year 1997 audit report was due to the NIGC no later than April 30, 1998. The NIGC did not receive the audit report.

5. The history of this violation is as follows:

a. The Respondent failed to submit audit reports for fiscal years 1993, 1994, 1995, and 1996.

b. On March 3, 1997, the Respondent and the NIGC entered into a Memorandum of Understanding ("MOU") extending the due date for the submission of all audit reports 160 days to August 10, 1997. The Respondent failed to comply with the MOU.

c. On October 30, 1997, the Chairman issued a NOV against the Respondent for failure to submit audit reports for fiscal years 1993, 1994, 1995, and 1996. The Respondent did not appeal the NOV, and it became a final order of the Commission.

d. On December 1, 1997, the Chairman issued a Notice of Proposed Civil Fine Assessment pursuant to 25 C.F.R. § 575 in the amount of $40,000 (Forty Thousand Dollars). In arriving at this amount the Chairman considered that the Respondent had failed to have its gaming operation audited and to submit audit reports to the NIGC for the entire time it had operated gaming. The Chairman also considered that the Respondent had failed to honor the MOU it entered into with the NIGC.

e. On January 23, 1998, the Respondent and the NIGC reached a Settlement Agreement regarding the Proposed Civil Fine. The Respondent agreed to submit

all future audit reports in compliance with NIGC regulations. The NIGC agreed to accept audited general purpose financial statements in lieu of the audit reports, and the Respondent agreed to submit those audited statements by March 2, 1998. On April 20, 1998, the NIGC received several documents purporting to be audited general purpose financial statements from the Respondent. These documents were not audited general purpose financial statements.

f. The Respondent further agreed to a civil fine in the amount of $16,000 (Sixteen Thousand Dollars), with $1,000 (One Thousand Dollars) payable under an agreed upon schedule, and the remaining $15,000 (Fifteen Thousand Dollars) stayed contingent upon future compliance. If the Respondent failed to timely submit its fiscal year 1997 audit report, it was required to pay $5,000 (Five Thousand Dollars) to the NIGC within 20 business days following the due date for submission of the audit report. The same agreement applied to fiscal years 1998 and 1999.

g. The Respondent failed to submit its fiscal year 1997 audit report within 120 days of the end of Respondent's fiscal year. Furthermore, the Respondent failed to remit $5,000 within 20 days of the due date for submission of the audit report. The NIGC has not received the $5,000, nor has it received the audit report. The Respondent has been paying the $1,000 fine under the agreed upon schedule.

h. On July 17, 1998, the NIGC issued NOV-98-13 to the Respondent for failure to submit the annual audit report for fiscal year 1997. The NOV provided that, to correct the violation, the NIGC must receive a signed bound copy of the fiscal year 1997 audit report within 30 days of service of the NOV. The NOV was served on July 17, 1998. As of the date of this Notice of Violation and Temporary Closure Order, the NIGC has not received the fiscal year 1997 audit report.

6. <u>OPERATION OF CLASS III GAMING WITHOUT A TRIBAL-STATE COMPACT</u>

a. Pursuant to 25 C.F.R. § 502.4 of the NIGC's regulations, Class III gaming means all forms of gaming that are not class I gaming or class II gaming specifically including (but not limited to) any slot machines as defined in 15 U.S.C. § 1171(a)(1) and electronic or electromechanical facsimiles[1] of any game of chance.

b. Between November 13, 1998, and on or about December 8, 1998 the Respondent offered a variety of gambling devices for play at Respondent's gaming operation. Play of these devices falls within the definition of Class III gaming. The

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[1] An electronic or electromechanical facsimile means any gambling device as defined in 15 U.S.C. § 1171(a)(2) or (3).

Respondent does not have a compact with the State of Oklahoma which authorizes the playing of gambling devices at the Respondent's gaming operation.

c. Accordingly, the Respondent is operating Class III games in the absence of a tribal-state compact in violation of 25 U.S.C. § 2710(d) and 25 C.F.R. § 573.6(a)(11).

7. The Chairman of the Commission may rescind this Temporary Closure Order for good cause shown.

8. Under 25 CFR §573.6(c), within seven (7) days after service of this Temporary Closure Order, the Respondent may request, orally or in writing, informal expedited review by the Chairman. The Chairman must complete such review within two (2) days after receipt of a timely request. Within two (2) days after the expedited review provided by 25 CFR §573.6(c), the Chairman must decide whether to continue the Order and must provide the respondents with an explanation of the basis for the decision.

9. Whether or not a Respondent seeks the informal expedited review described above, within 30 (thirty) days after service of this Order, the respondents may appeal to the full Commission under 25 CFR Part 577 by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L Street, NW, 9th Floor, Washington, D.C. 20005. The Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Order.

10. Within ten (10) days after filing a notice of appeal, the respondent must file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the respondents wish to present oral testimony or witnesses at the hearing, the respondents must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, whether a closed hearing is requested and why. The respondents may waive their right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

11. The measures required to correct the violations are:

a. The NIGC must receive a signed bound copy of the fiscal year 1997 audit report.[2] The financial statements shall be prepared in accordance with generally accepted accounting principles and the audit report shall be based on an audit conducted in accordance with generally accepted accounting standards as required by 25 C.F.R.

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[2] The Respondent has ceased operation of the class III gaming devices at issue.

§ 571.12. The audit report should be submitted to: Chairman, National Indian Gaming Commission, 1441 L Street, NW, 9th Floor, Washington, DC 20005.

b. The Respondent must demonstrate, in a manner satisfactory to the NIGC, the establishment and maintenance of satisfactory accounting systems and procedures that, at a minimum:

i. Include an adequate system of internal accounting controls;
ii. Permit the preparation of financial statements in accordance with generally accepted accounting principles; and
iii. Are susceptible to audit.

c. The NIGC must be satisfied that the gaming operation provides the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

d. The Respondent must produce current financial statements prepared in accordance with generally accepted accounting principles and must produce a current audit report based on an audit conducted in accordance with generally accepted accounting standards as required by 25 C.F.R. § 571.12.

e. The Respondent must be in full compliance with IGRA, NIGC regulations, and the Tribe's gaming ordinance.

12. The violations cited in this NOV may result in the assessment of civil fines against the Respondent in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), the Respondent may submit written information about the violations to the NIGC Chairman within 15 days after service of this NOV (or such longer period as the NIGC Chairman may grant for good cause). The NIGC Chairman shall consider any information submitted in determining the facts surrounding the violations and the amount of the civil fine, if any. Such information should be submitted to the address set forth in paragraph 6.

13. The Respondent may appeal the allegations contained in this NOV to the NIGC within 30 days after service of this NOV. 25 C.F.R. Part 577. The Respondent may appeal the allegations by submitting a Notice of Appeal to the NIGC at the address set forth in paragraph 6 above. The Respondent has a right to be represented by counsel in such an appeal. A Notice of Appeal must reference this NOV. Within ten (10) days after filing a Notice of Appeal, the Respondent must file with the NIGC a supplemental statement that states with particularity the relief desired and the grounds therefore and includes, when available, supporting evidence in the form of affidavits.

14. If the Respondent wishes to present oral testimony or witnesses at a hearing, the Respondent must include a request to do so with the supplemental statement. The request to present oral testimony must specify the names of the proposed witnesses and the

general nature of their expected testimony, and whether a closed hearing is requested and why. The Respondent may waive the right to an oral hearing and instead elect to have the matter determined by the NIGC solely of the basis of the written submissions.

Montie R. Deer, Chairman
National Indian Gaming Commission

1-6-99
Date

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