NOTICE OF VIOLATION

Ref. No.: NOV-99-34

NOV 18 1999

VIA CERTIFIED MAIL

To: Mr. Kenneth Van Aernam
Ken's Smoke Shop
Junction 219 & Southern Tier Expressway
Salamanca, New York 14779

Respondent

1. The Chairman, National Indian Gaming Commission, hereby gives notice to you, the Respondent, that as owner and operator of Ken's Smoke Shop you are in violation of Indian Gaming Regulatory Act and the tribal gaming ordinance of the Seneca Nation because you unlawfully sell pull-tabs.

2. Authority to issue this notice. Under Regulations of the National Indian Gaming Commission (hereinafter "NIGC"), the Chairman of the NIGC (hereinafter "Chairman") may issue a Notice of Violation (hereinafter "NOV") to any person for violation of any provision of the Indian Gaming Regulatory Act (hereinafter "IGRA"), NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 C.F.R. § 573.3.[1]

3. Federal and tribal requirements that are being violated.

a. Under IGRA, ownership of a gaming operation must rest with the Tribe having governmental authority over the land on which the operation is located. The only exception to this is when the Tribe, through an ordinance which has been approved by the Chairman, has authorized privately owned gaming and such operation meets all the requirements found in regulations issued by the NIGC. 25 U.S.C. § 2710 (a)(2) and (a)(4) and 25 C.F.R. § § 522.10 and 522.11.

b. On March 19, 1994, the Seneca Nation adopted a gaming ordinance (hereinafter "Ordinance") which was submitted for approval to the NIGC. This Ordinance was approved by the Chairman on September 16, 1994. The Ordinance, at Section 6, provides that the Nation shall have the sole proprietary interest in the conduct of gaming within Seneca Nation lands. The Ordinance does not permit individually owned gaming on Seneca Nation tribal lands and does not provide for licensing of individually owned gaming operations. Further, under Section 17-1, the ordinance is violated by any person who operates or conducts any gaming activity without a gaming license approved by the tribal council.

c. Under IGRA, pull tabs may only be sold and played as a Class II gaming activity at locations regularly offering bingo. 25 U.S.C. § 2703(7). If pull tabs are not sold and played in conjunction with bingo, then, to be lawful under IGRA, their sale and play must be authorized as a Class III gaming activity in an approved Tribal-State Compact. 25 U.S.C. § 2710(d).

4. Circumstances of the violation.

a. On May 12, 1999, representatives of the NIGC visited Ken's Smoke Shop, located on Seneca Nation tribal lands, and purchased pull-tabs. Ken's Smoke Shop does not offer bingo. The representatives did not observe bingo being played during their visit and did not observe any arrangements which indicate that bingo is regularly played in the building.

b. Again, on September 14, 1999, representatives of the NIGC visited Ken's Smoke Shop and purchased pull tabs. The representatives did not observe bingo being played during their visit and did not observe any arrangements which indicate that bingo is regularly played in the building.

c. The Seneca Nation does not have a compact with the State of New York which authorizes the sale and play of pull-tabs.

d. The tribal council of the Seneca Nation has not issued a license for a privately-owned gaming operation at Ken's Smoke Shop.

5. Measures required to correct this violation.

a. You must cease the sale of pull tabs within ten days of the date of this notice.

b. You must agree not to engage in future sales of pull tabs.

c. You must notify the NIGC by response to this Notice that you have ceased the sale of pull tabs and will not conduct future sales of pull-tabs. This letter should be submitted to:

Chairman, National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, D.C. 20005

6. Sanctions that may be imposed. 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 day, per violation. 25 U.S.C. § 2713(a) and 25 C.F.R. § 575. The violations cited in this NOV may provide a basis for the Chairman to issue an order to close the facility because they constitute substantial violations of IGRA. 25 U.S.C. § 2713(b) and 25 C.F.R. § 573.6.

7. Right to submit information in connection with a proposed civil fine assessment. 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 5c.

8. Right to appeal. 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 5c. 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.

9. Right to a hearing as part of the appeal. 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.

10. A copy of the regulations cited in this Notice of Violation is attached for your information.

11. Point of contact at the NIGC on this matter is:
William F. Grant, Staff Attorney
Phone (202) 632-7003
Fax (202) 632-7066.

NOV 18 1999
Date

Montie R. Deer, Chairman
National Indian Gaming Commission

CERTIFICATE OF SERVICE

I do hereby certify that I have this 18th day of November 1999, mailed the foregoing Notice of Violation No.: NOV-99-34 via certified mail, return receipt requested to the following person:

Mr. Kenneth Van Aernam
Ken's Smoke Shop
Junction 219 & Southern Tier Expressway
Salamanca, New York 14779

Margarita Ramos (signature)

MARGARITA RAMOS (print)

on behalf of the
National Indian Gaming Commission

NATIONAL INDIAN GAMING COMMISSION
1441 L Street, N.W., Suite 9100
Washington, DC 20005