FIRST AMENDMENT TO TRIBAL/STATE COMPACT FOR CLASS III GAMING BETWEEN THE NOOKSACK INDIAN TRIBE AND THE STATE OF WASHINGTON

WHEREAS, on October 28, 1991, the Governor of the State of Washington and the Chairman of the Nooksack Indian Tribe executed a Compact pursuant to the Indian Gaming Regulatory Act of 1988, P.L. 100-497, codified at 25 U.S.C. Section 2701-2721 and 18 U.S.C. Section 1166-1168, and

WHEREAS, pursuant to the Indian Gaming Regulatory Act of 1988 and by action of the United States Department of the Interior on June 15, 1992, this Compact became effective on June 23, 1992, and

WHEREAS, the parties wish to amend the following Sections of the Compact:

(1) Section 2(f) is amended to add "security personnel" to the definition of "gaming employee."

(2) Section 3 is amended to add new Class III activities; to remove the dollar limitations on personal checks; to increase the number of gaming stations to equal the number of stations set forth in other Tribal/State Compacts; and, to allow for the annualization of gaming operation hours.

(3) Section 5 is amended to allow Nooksack Tribal Members to become conditionally certified by the State Gaming Agency; to require certified employees to notify the State Gaming Agency of changes to the information provided on their application for certification; and, to change the state certification fees to reflect actual costs incurred by the State Gaming Agency.

(4) Section 7 is amended to allow tribal gaming agents to assist state gaming agents in monitoring and inspecting gaming activities and to set forth the appropriate venue for enforcement actions.

(5) Section 9 is amended to set forth the appropriate venue for criminal prosecution of tribal members and, for jurisdictional purposes, to include RCW 9.46.075 as one of the sections of law to which the Tribe consents.

(6) Appendix B is deleted from the Compact because it has been incorporated into RCW 9.46.

NOW, THEREFORE, and pursuant to Section 15(d)(i) of the Compact, the following Sections of the Compact shall be and hereby are amended to read and state as follows:

Section 2(f) is amended to read and state as follows:

(f) "Gaming Employee" means any person employed in the operation or management of the gaming operation, whether employed by or contracted to the Tribe, or by any person or enterprise providing on or off-site services to the Tribe within or without the gaming facility regarding any Class III activity, including, but not limited to, gaming operation managers and assistant managers; accounting personnel; surveillance personnel; security personnel; cashier supervisors; dealers or croupiers, box men; floormen; pit bosses; shift bosses; cage personnel; collection personnel; gaming consultants; management companies and their principals; and any other natural person whose employment duties require or authorize access to restricted areas of the gaming facility not otherwise opened to the public. This section shall not be applicable to the Board of Directors of the N.E.D.C. N.E.D.C. board members shall be screened by the Tribal Council to ensure qualifications with the provisions of Section 5(~~[C]~~c). The Tribal Gaming Agency shall notify the State Gaming Agency of the identity of all board members of the N.E.D.C.

Section 3(a)(xx) is deleted and amended to read and state as follows:

(xx) ~~[Poker played in the same manner as authorized in State licensed card rooms and in conformity with those laws and regulations of the State regarding hours or periods of operation of such card game and its limitations on wagers or pot sizes in such card games limited to a maximum of five tables, which tables are in addition to the number of gaming stations set forth in Section 3(g);]~~

(xx) Keno. Provided, that the Tribe shall submit the proposed game regulations to the State Gaming Agency at least thirty (30) days prior to the time play begins. If the State takes no action within the thirty (30) days, the Tribe may begin offering the game. If a dispute arises between the Tribe and the State regarding issues including but not limited to rules of the game, legality of the game, manner of play, or ability of the parties to regulate, the State and the Tribal Gaming Agencies shall meet and resolve the dispute prior to the time play of that game can begin. The provisions of Section XII(c) may be utilized to resolve

disputes if necessary.

Section 3(a)(xxi) is amended to read and state as follows:

(xxi) Poker.

Section 3(a)(xxii) is added and reads as follows:

(xxii) Jackpot Poker. Provided, that the Tribe shall submit the proposed game regulations to the State Gaming Agency at least thirty (30) days prior to the time play begins. If the State takes no action within the thirty (30) days, the Tribe may begin offering the game. If a dispute arises between the Tribe and the State regarding issues including but not limited to rules of the game, legality of the game, manner of play, or ability of the parties to regulate, the State and the Tribal Gaming Agencies shall meet and resolve the dispute prior to the time play of that game can begin. The provisions of Section XII(c) may be utilized to resolve disputes if necessary. For purposes of this activity, the Class II and/or Class III poker stations associated with the jackpot as well as the employees associated with the jackpot shall be subject to the jurisdictional provisions set forth in Sections IV and V of this Compact and the enforcement provisions set forth in Sections VII, VIII, and IX of this Compact.

Section 3(b) is amended to read and state as follows:

(b) Punchboards, [~~and~~] Pull Tabs, **Poker** and Washington State Lottery - Separate Locations. In addition to the games authorized by Section 3(a), the Tribe may utilize punchboards and pull tabs in the facility and at other locations within the Nooksack Tribal Lands subject to regulation by the Tribe and operated in a manner consistent with the sale of punchboards and pull tabs in the Tribal [~~bingo~~] gaming facility. The operation of State lottery retail locations shall be subject to the provisions of RCW 67.70, WAC Chapter 315 and Tribal Ordinance. Poker played in the same manner as authorized in State licensed card rooms and in conformity with those laws and regulations of the State regarding hours or periods of operation of such card game and its limitations on wagers or pot sizes in such card games [~~limited to a maximum of five tables~~], which tables are in addition to the number of gaming stations set forth in Section 3(g);

Section 3(e) is amended to read and state as follows:

(e) Forms of Payment. All payment for wagers made in authorized forms of Class III gaming conducted by the Tribe on its Tribal Lands, including the purchase of chips, for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. [~~Personal checks shall not exceed $250.00 per person per day.~~]

Section 3(f) is amended to read and state as follows:

(f) Size of Gaming Floor. The actual gaming floor within the gaming facility shall not exceed [~~12,000~~] 20,000 square feet.

Section 3(g) is amended to read and state as follows:

(g) Size of Class III Gaming Operation. The number of gaming stations authorized for use on the gaming floor within the facility shall not exceed thirty-one (31) stations. ~~After [eighteen (18)] six (6) months of continual operation of the Class III gaming facility, the number of gaming stations may be increased to thirty-one (31) with up to a maximum of twenty-six (26) blackjack tables, provided none of the following have occurred: Violations of the provisions of the Compact which have resulted in sanctions imposed by the Federal District court; substantial and repeated violations of Sections 3 and 4 of this Compact against the gaming facility; or material adverse impacts on the public safety or welfare of the surrounding communities in the nature of criminal activities directly related to the operation of the Class III facility. Provided further, such expansion shall not occur while a state initiated action in Federal District court or a dispute under Section 12(c) is pending on this issue.~~

Section 3(i) is amended to read and state as follows:

(i) Hours of Operation. The maximum number of operating hours for the gaming operation shall not exceed an average of eighty (80) hours per week on an annualized basis. The Tribe shall provide a schedule of the hours of operation to the State Gaming Agency prior to commencement of operations in the gaming facility and on a quarterly basis thereafter. The gaming facility authorized in this Compact shall be closed for a minimum of four hours in each twenty-four hour period and will close between the hours of 2:00 a.m. and 6:00 a.m. each day unless and until the Tribal and State Gaming Agencies, after consultation with enforcement officials from surrounding jurisdictions, mutually agree in writing to a different closing period.

Section 3(j) is amended to read and state as follows:

(j) Ownership of Gaming Facility and Gaming Operation. The gaming operation shall be owned by the Tribe. Provided, the Tribe may utilize a management company in the gaming operation, including the gaming facility, consistent with the requirements of the I.G.R.A., if market factors and business reasons dictate. Provided further, any management company shall obtain certification from the state authorizing it to engage in Class III gaming prior to the commencement of operation or prior to construction hard costs if participating in the construction of the gaming facility.

Section 3(k) is amended to read and state as follows:

(k) Prohibited Activities. Any Class III gaming activity not specifically authorized in Section 3(a) is prohibited. In addition, any electronic facsimile of a gaming activity, and all gambling devices are prohibited. ~~[Except as provided in Section 3(a) (xx),] [n]~~Nothing herein is intended to prohibit or restrict otherwise lawful and authorized Class II gaming activities upon Nooksack Tribal Lands or within the gaming facility.

Section 3(l) is amended to read and state as follows:

(l) Prohibition on Minors. No person under the age of eighteen shall participate in any gaming operation, or be allowed on the gaming floor authorized by this Compact during actual hours of operation. Should alcoholic beverages be offered on the gaming floor pursuant to applicable law, then no ~~[person]~~patron under the age of twenty-one shall be permitted on the gaming floor during actual hours of operation.

Section 5(c) is amended to read and state as follows:

(c) Provisional/Conditional Certification of Tribal Members. For enrolled members of the Nooksack Indian Tribe who are applicants for Class III gaming certification and licensing, the State Gaming Agency will consult with the Tribal Gaming Agency prior to denying certification to such an applicant who does not meet the criteria for certification. The Tribal and State Gaming Agencies may waive, by mutual agreement, through a provisional or conditional certification, certain criteria for such enrolled tribal members if the waiver does not pose an appreciable risk to the public or the lawful operation of the gaming facility. If the Tribe can show extenuating circumstances why an enrolled tribal member who does not meet all criteria should be further considered for a

provisional or conditional certification, the Tribal and State Gaming Agencies may agree to a temporary certification, based on specific conditions and a further detailed review of the applicant. Additional fees may be required to maintain a conditional or provisional certification.

Because of the addition of Section 5(c), Sections 5(c) through (m) have been re-lettered "Sections 5(d) through 5(n)."

Section 5~~(c)~~(d)xii has been added to read and state as follows:

xii. All applicants for, and holders of, a state certificate shall be required to notify the State Gaming Agency of any changes to information relative to their application within 72 hours of such change, including, but not limited to: ownership, contracts, arrests, name, and address. Failure to provide timely notification of such changes shall be grounds for denial or revocation of a State certification.

Section 5~~(i)~~(j) has been amended to read and state as follows:

~~(i)~~ (j) Fees For State Certification. The fees for State certification shall be the following:

(i)	Gaming Employee/in-state Initial Certification	~~($ 150.00)~~	$ 200.00
(ii)	Gaming Employee/resident of state other than Washington within past five years Initial Certification		$ 250.00
~~(ii)~~ (iii)	Gaming Employee - Renewal	~~($ 75.00)~~	$ 125.00
~~(iii)~~ (iv)	Management Companies and/or Financiers Initial Certification		$1500.00
~~(iv)~~ (v)	Management Companies and/or Financiers Renewal		$ 500.00
~~(v)~~ (vi)	Manufacturers and Suppliers Initial Certification		$1500.00
~~(vi)~~ (vii)	Manufacturers and Suppliers - Renewal		$ 500.00

Section 7(a) has been amended to read and state as follows:

(a) Monitoring. The State Gaming Agency shall, pursuant to the provisions of this Compact, have the authority to monitor the Tribal gaming operation to ensure that the operation is conducted in compliance with the provisions of this Compact. In order to properly monitor the Tribal gaming operation, agents of the State Gaming Agency shall have free and unrestricted access to all areas of the gaming facility during normal operating hours without giving prior notice to the Tribal gaming operation. The Tribal Gaming Agency may send a representative to assist the State gaming agents in the inspection.

(b) Enforcement Actions By State Gaming Agency. In the event the State Gaming Agency has information that may indicate that an individual's tribal license should be revoked or suspended, it shall be handled in the following manner: the State Gaming Agency will notify the Tribal Gaming Agency who shall either bring an action in accordance with tribal law; refer the case back to the State for action under State procedures; or decline to take the case, thereby deferring to the State to take any action the Tribes or the State deem necessary for resolution of the issues. Provided, the State retains the right to take action, through Tribal or State court or administrative processes, to suspend or revoke a state certification.

Because of the addition of Section 7(b), Sections 7(b) through 7(d) have been re-lettered "Sections 7(c) through 7(e)."

Section 9(b) has been amended to read and state as follows:

(b) Jurisdictional Forums. Following investigation and arrest, formal charges will be brought in the appropriate venue. Criminal prosecution of non-~~[Indians]~~tribal members will be through the proper State or Federal courts. ~~[Indian criminal defendants will be prosecuted in the Nooksack Tribal Court, State or Federal Court.]~~ Tribal members who are criminal defendants will be prosecuted in Tribal or Federal Court. Wherever possible, for criminal defendants who are Tribal members, Tribal Court will be the preferred venue for individual prosecutions unless the Tribe declines to place jurisdiction in the Tribal Court within six (6) months of apprehension by a law enforcement agency.

Section 9(c) has been amended to read and state as follows:

(c) Consent to Application of State Law. For the purposes of 25 USC Section 1166(d) and enforcing the provisions of this Compact, and of protecting the public health, safety

and welfare, and to the extent not inconsistent with other provisions of this Compact, RCW 9.46.075; 9.46.140; 9.46.155; 9.46.160; 9.46.170; 9.46.180; 9.46.185; 9.46.190; 9.46.196; 9.46.198; 9.46.220; 9.46.230; 9.46.240; as now or hereinafter amended, including those amendments enacted by the 1991 Legislative Regular Session, set forth in Appendix B, shall be applicable and incorporated herein as part of this Compact and the Tribe consents to this grant of jurisdiction to the State with respect to gaming on Nooksack Tribal Lands.

Section 11(b)(vi) has been amended to read and state as follows:

(vi) The Tribal gaming operation shall maintain a cashier's cage in accordance with the standards set forth in Section 7(3)(d) and Section 9(3) of Appendix A, and shall not modify such standards without the concurrence of the State Gaming Agency. The Tribal Gaming Agency and the State Gaming Agency may review cashier's cage security. If the cashier's cage does not comply with the security standards set forth in the Appendix, the Tribal gaming operation shall modify its cashier's cage to remedy such deficiency. In the event of a dispute the matter will be handled in accordance with provisions of Section 12(c).

Section 13(3)(a)(iv) of Appendix A has been amended to state and read as follows:

(iv) Immediately exchange the check for currency and coin in an amount equal to the amount for which the check is drawn, ~~[not to exceed two hundred and fifty ($250.00) per patron per day]~~; and

Appendix B is deleted, as follows:

~~APPENDIX B~~

~~AMENDATORY SECTION. Sec. 10. RCW 9.46.220 and 1987 c 4 s 42 are each amended to read as follows:~~

~~(1) A person is guilty of professional gambling in the first degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:~~

~~(a) While engaging in professional gambling acts in concert with or conspires with five or more people;~~

~~(b) Accepts wagers exceeding five thousand dollars during any calendar month on future contingent events; or~~

~~(c) Operates, manages, or profits from the operation of a premises or location where persons are charged a fee to participate in card games, lotteries, or other gambling activities that are not authorized by this chapter or licensed by the commission.~~

~~(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the rules adopted pursuant to this chapter.~~

~~(3) Professional gambling in the first degree is a class B felony subject to the penalty set forth in RCW 9A.20.021.~~

~~NEW SECTION. Sec. 11. A new section is added to chapter 9.46 RCW to read as follows:~~

~~(1) A person is guilty of professional gambling in the second degree if he or she engages in or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter, and:~~

~~(a) While engaging in professional gambling acts in concert with or conspires with less than five people;~~

~~(b) Accepts wagers exceeding two thousand dollars during any calendar month on future contingent events;~~

~~(c) Maintains a "gambling premises" as defined in this chapter; or~~

~~(d) Maintains gambling records as defined in RCW 9.46.020.~~

~~(2) However, this section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted pursuant to this chapter.~~

~~(3) Professional gambling in the second degree is a class C felony subject to the penalty set forth in RCW 9A.20.021.~~

~~NEW SECTION. Sec. 12. A new section is added to chapter 9.46 RCW to read as follows:~~

~~(1) A person is guilty of professional gambling in the third degree if he or she engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling as defined in this chapter; and~~

~~(a) His or her conduct does not constitute first or second degree professional gambling;~~

~~(b) Operates any of the unlicensed gambling activities authorized in this chapter in a manner other than as prescribed by this chapter; or~~

~~(c) Is directly employed in but not managing or directing any gambling operation.~~

~~(2) This section shall not apply to those activities enumerated in RCW 9.46.0305 through 9.46.0361 or to any acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and the rules adopted pursuant to this chapter.~~

~~(3) Professional gambling in the third degree is a gross misdemeanor subject to the penalty established in RCW 9A.20.021.~~

NOOKSACK INDIAN TRIBE

By _____ Dated: 22 day of April, 1994.
Joseph Johnson
Chairman

THE STATE OF WASHINGTON

By _____ Dated: 26 day of April, 1994.
Mike Lowry
Governor

THE DEPARTMENT OF THE INTERIOR

By Ada E. Deer Dated: 11th day of July, 1994.