December 16, 2008

LaRue Martin Parker, Chairman
Caddo Nation of Oklahoma
P.O. Box 487
Binger, OK 73009

Via fax (405-656-2892)
and U.S. mail

Dear Chairman Parker:

This is in response to your request for review and approval of two amendments to the Caddo Nation Gaming Ordinance enacted by Resolution 10-2008-01 and Resolution 10-2008-02, both adopted by the Caddo Nation Tribal Council on October 3, 2008. The amendments are hereby approved.

Resolution 10-2008-01 amends the definition of *Indian lands* to include reference to a portion of an allotment that has been held by the United States in trust for the benefit of Caddo Nation members for over one hundred years. The record demonstrates that the conduct of gaming activities by the Caddo Nation on this allotment would be consistent with the Indian Gaming Regulatory Act (IGRA) whether the beneficial interest in this allotment stays in individual ownership or is transferred to the Caddo Nation. Before opening a gaming facility, however, the Caddo Nation must still obtain lawful possession of the allotment through lease or trust-to-trust transfer, and it must also comply with the National Indian Gaming Commission (NIGC) regulations concerning facility licensing. 73 Fed. Reg. 6019 (Feb. 1, 2008) (to be codified at 25 C.F.R. pt. 559).

Resolution 10-2008-02 amends a section of the Caddo Nation's gaming ordinance that sets forth approved uses of gaming revenues. This amendment also concerns gaming on the individually-held allotment described above. It authorizes the Caddo Nation to pay the individual owners of that allotment 10% of the net revenues derived from any gaming operation on the land until the Caddo Nation acquires the property in trust for the Tribe. In support of this amendment, a "whereas" clause in the resolution references an NIGC regulation, 25 C.F.R. § 522.10, that allows individually-owned gaming operations on Indian lands. According to my understanding of the Caddo Nation's plans, however, this regulation would not apply, because the gaming operation will be owned and controlled by the Caddo Nation whether the land is leased from the allotment's individual owners or the Caddo Nation purchases the existing trust interests in the land.

There is a concern that a payment of 10% of net revenues for a land lease could violate IGRA's sole proprietary interest provision. 25 U.S.C. § 2710(b)(2)(A); *see also*

Caddo Nation of Oklahoma Gaming Ordinance § 104 ("The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance."). Unless a payment of a percentage of gaming revenues is specifically authorized by IGRA, the NIGC may view the payment as an illegal proprietary interest if it is coupled with the power to control some part of the gaming operation or if the percentage-based payment is expected to be far beyond the market value of the goods/services provided, taking into account the degree of risk assumed by the third party under the particular circumstances.

This amendment would not extend any control over the gaming operation to the allotment landowners, so the only issue is whether 10% of net revenues would result in payment far beyond the fair market value. In this case, the fair annual rental of the property will be determined by the Bureau of Indian Affairs (BIA) prior to approving any lease between the Caddo Nation and the individual allotment owners. 25 C.F.R. §§ 162.101; 162.604(b). According to our experience, the BIA will not approve gaming land leases that provide for rental payments far beyond fair market value and thereby violate IGRA's sole proprietary interest provision. Consequently, I can defer to BIA's lease approval process to ensure that the proposed amendment to the Caddo Nation's gaming ordinance will not cause a violation of IGRA. My approval of Resolution 10-2008-02 should not be construed as an indication that I have determined whether 10% of net revenues from the Caddo Nation's planned facility would represent a fair annual rental. That determination will rest with the BIA, to which the NIGC shall defer.

I wish the Caddo Nation success in its gaming endeavors. If you have any questions as you proceed, you may contact Region Director Tim Harper at (918) 581-7924 or Senior Attorney Jeffrey Nelson at (202) 632-7003.

Sincerely,

Philip N. Hogen
Chairman

Caddo Nation of Oklahoma
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Resolution # 10-2008-01

RESOLUTION TO AMEND THE CADDO NATION GAMING ORDINANCE

WHEREAS: The Caddo Nation of Oklahoma is a federally recognized tribe, governed by a constitution pursuant to the Oklahoma Indian Welfare Act of 1936 (49 Stat. 1967), and

WHEREAS: Under the revised Caddo Nation Constitution and By-laws adopted by the Caddo Tribe of Oklahoma on June 26, 1976, and recognized by the Secretary of the Interior, the Tribal Council of the Caddo Nation has certain powers, and

WHEREAS: Under Article V. Section 2, part "h" of the Constitution, the Caddo Tribal Council is empowered to employ and pay legal counsel, and

WHEREAS: The Caddo Nation Tribal Council in 2006, submitted a Gaming Ordinance ("Ordinance") to the National Indian Gaming Commission ("NIGC") for approval, and

WHEREAS: The NIGC thereafter approved the ordinance consistent with the Indian Gaming Regulatory Act ("IGRA"), and

WHEREAS: The Caddo Nation Tribal Council hereby intends to amend the previously approved Ordinance by amending Section 102 (k) to include:

(4) including but not limited to a portion of the original Amos Longhat #705 Caddo Allotment more particularly described as follows: The W/2, SE/4, Section 3, T12N, R13W I.M. Caddo County, Oklahoma

WHEREAS: The Caddo Nation Tribal Council hereby approves the herein described amendment and submits such amendment to the NIGC for review and approval.

Resolution 10.2008.01

NOW THEREFORE BE IT RESOLVED, that the Caddo Nation of Oklahoma hereby approves the herein described amendment to the Ordinance and hereby submits such amendment to the NIGC for review and approval.

CERTIFICATION

We the undersigned officers of the Caddo Nation of Oklahoma Tribal Council, do hereby certify that the foregoing resolution was duly adopted on this 3rd day of October 2008, by a vote of 6 FOR; 0 AGAINST and 0 ABSTAINING.

LaRue Martin Parker, Chairman — Date 10-3-08

Diane Sparks, Secretary — Date 10-3-08

THE GREAT SEAL OF THE CADDO NATION OF OKLAHOMA

Caddo Nation of Oklahoma
Post Office Box 487
Binger, Oklahoma 73009
(405) 656-2344 (405) 656-2345
FAX # (405) 656-2892

Resolution # 10-2008-02

RESOLUTION TO AMEND THE CADDO NATION GAMING ORDINANCE

WHEREAS: The Caddo Nation of Oklahoma is a federally recognized tribe, governed by a constitution pursuant to the Oklahoma Indian Welfare Act of 1936 (49 Stat. 1967), and

WHEREAS: Under the revised Caddo Nation Constitution and By-laws adopted by the Caddo Tribe of Oklahoma on June 26, 1976, and recognized by the Secretary of the Interior, the Tribal Council of the Caddo Nation has certain powers, and

WHEREAS: Under Article V. Section 2, part "h" of the Constitution, the Caddo Tribal Council is empowered to employ and pay legal counsel, and

WHEREAS: The Caddo Nation Tribal Council in 2006, submitted a Gaming Ordinance ("Ordinance") to the National Indian Gaming Commission ("NIGC") for approval, and

WHEREAS: The NIGC thereafter approved the ordinance consistent with the Indian Gaming Regulatory Act ("IGRA"), and

WHEREAS: The Caddo Nation Tribal Council, pursuant to 25 CFR 522.10, hereby intends to amend the previously approved Ordinance by amending Section 105 to include:

(b) 10% of Net Revenues from any gaming operation located on Indian Lands not owned by the Tribe, more specifically described in Section 102 (k), shall be provided to the property owners until the acquisition of the subject property for the tribe in trust pursuant to 25 CFR 151 is consummated

Resolution 10-2008-02

WHEREAS: The Caddo Nation Tribal Council hereby approves the herein described amendment and submits such amendment to the NIGC for review and approval.

NOW THEREFORE BE IT RESOLVED, that the Caddo Nation of Oklahoma hereby approves the herein described amendment to the Ordinance and hereby submits such amendment to the NIGC for review and approval.

CERTIFICATION

We the undersigned officers of the Caddo Nation of Oklahoma Tribal Council, do hereby certify that the foregoing resolution was duly adopted on this 3rd day of October 2008, by a vote of 6 FOR; 0 AGAINST and 0 ABSTAINING.

LaRue Martin Parker, Chairman — Date 10-3-08

Diane Sparks, Secretary — Date 10-2-08

THE GREAT SEAL THE CADDO NATION OF OKLAHOMA