

NATIONAL
INDIAN
GAMING
COMMISSION

OCT 27 1994

Sue M. Shaffer, Chairperson
Cow Creek Band of Umpqua Tribe of Indians
2400 Stewart Parkway, Suite 300
Roseburg, Oregon 97470

Dear Chairperson Shaffer:

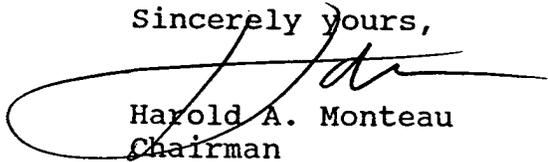
This letter responds to your request to review and approve the tribal gaming ordinance adopted on May 15, 1994, by the Cow Creek Band of Umpqua Tribe of Indians (Tribe). This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games. It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. As discussed in the telephone conversation between Mai Dinh and Virginia Boylan on October 25, 1994, the Tribe will modify its background investigation procedures to meet the NIGC's requirements. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

Thank you for submitting the ordinance of the Cow Creek Band of Umpqua Tribe of Indians for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,



Harold A. Monteau
Chairman

cc: Virginia Boylan, Esq.

Cow Creek Band of Umpqua Tribe of Indians

RESOLUTION NO. 94-13

WHEREAS, The Board of Directors of the Cow Creek Band of Umpqua Tribe of Indians, pursuant to Article VII, Section 1, of the Tribal Constitution approved July 17, 1991 by the Bureau of Indian Affairs, is the official governing body of the Tribe, authorized to act in behalf of the Tribal Council; and

WHEREAS, The Cow Creek Band of Umpqua Tribe of Indians submitted to the National Indian Gaming Commission on February 15, 1994, the Tribal Gaming Ordinance 91-1, adopted by the Tribe on August 11, 1991, and

WHEREAS, On April 1, 1994 the National Indian Gaming Commission returned Ordinance 91-1 to the Tribe for revision to comply with federal regulations, and

WHEREAS, The Cow Creek Band of Umpqua Tribe of Indians made the requested revisions and other improvements, which were adopted by the Tribal Board of Directors at their May 15, 1994 Board Meeting, and

THEREFORE BE IT RESOLVED, that the Tribe is now submitting Tribal Gaming Ordinance 94-1, to replace the previous Tribal Gaming Ordinance 91-1, and seeks approval of the National Indian Gaming Commission as required by the Indian Gaming Regulatory Act, and

FURTHER BE IT RESOLVED, that the Tribal Board of Directors hereby authorizes the Tribal Chairman to submit Tribal Gaming Ordinance 94-1 to the National Indian Gaming Commission.

Cow Creek Band of Umpqua
Tribe of Indians

By: Sue M. Shaffer
Sue M. Shaffer

CERTIFICATION:

This resolution was adopted at a regularly scheduled meeting of the Tribal Board of Directors held on May 15, 1994 by a vote of 11 FOR, 0 AGAINST and 0 ABSTAINING.

BY: Tom Rondeau
Tom Rondeau, Sr.

**COW CREEK BAND OF
UMPQUA TRIBE OF INDIANS**

TRIBAL GAMING ORDINANCE

AS AMENDED AND RESTATED ON 7-15, 1994

**COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
 TRIBAL GAMING ORDINANCE
 AS AMENDED AND RESTATED AS OF 7-15, 1994**

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**COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
TRIBAL GAMING ORDINANCE
AS AMENDED AND RESTATED ON _____, 1994**

DEFINITIONS

Definitions. Unless a different meaning is clearly indicated from the context or is set forth below, the terms used in this Ordinance shall have the same meaning as defined in the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. 2701, et seq. ("IGRA").

"Applicant" means any individual, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any License described in or required by this Ordinance.

"Board" means the Board of Directors of the Cow Creek Band of Umpqua Tribe of Indians.

"Chairman" means the Chairman of the National Indian Gaming Commission.

"Class I Gaming" means either social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, Tribal ceremonies or celebrations.

"Class II Gaming" means Class II gaming as defined at 25 U.S.C. §2703(7)(A), and any regulations promulgated thereunder, and:

- (a) the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith)
 - (1) which is played for prizes, including, but not limited to, cash and/or merchandise with cards bearing numbers or other designations,
 - (2) in which the holder of the card covers or blocks such numbers or designations when an object or symbol, similarly numbered or designated, is drawn or electronically determined, and

- (3) in which the game is won by the first person covering a designated arrangement of numbers or designations on such cards, including (if played in the same location), pull tabs, lotto punch boards, tip jars, instant bingo, and other games similar to bingo;
- (b) card games that are
- (1) authorized by laws of the State of Oregon,
 - (2) not prohibited by the laws of the State of Oregon, and
 - (3) played in conformity with those laws and regulations (if any) of the State of Oregon regarding hours or periods of operation of, or limitations on wagers or pot sizes in, such card games; and
- (c) the term "Class II Gaming" shall not include
- (1) any banking card games, including baccarat, chemin de fer, blackjack (a/k/a "21"), or
 - (2) slot machines of any kind.

"Class III Gaming" means, consistent with the Compact, 25 U.S.C. §2703(8), and any regulations promulgated thereunder, all forms of gambling that are not Class I Gaming or Class II Gaming.

"Compact" means the "Tribal State Compact for Regulation of Class III Gaming between the Cow Creek Board of Umpqua Tribe of Indians and the State of Oregon" executed by the Governor of Oregon and the Chairperson of the Tribe as of October 2, 1992, and all amendments, appendices, exhibits and other attachments thereto.

"Commission" means the Cow Creek Tribal Gaming Commission.

"Commissioner" means an individual member of the Cow Creek Tribal Gaming Commission.

"Fiscal Year" means the period beginning on the Monday following the last Sunday of September of each year and ends on the last Sunday of September of the following year.

"Gaming" means any Class I Gaming, Class II Gaming or Class III Gaming, either individually or collectively, whether authorized or unauthorized.

"Gaming Device" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine, used remotely or directly in connection with any Gaming, which affects the result of a wager by determining or predicting the outcome of such game or the odds of winning or losing such game. The term shall be broadly construed to promote the purposes of this Ordinance and shall also include any devices, machines, components or contrivances which do or are capable of effecting, in any way, the playing of any Gaming.

"Gaming Establishment" means any premises where Gaming, other than Class I gaming, is operated or conducted on Trust Land, and includes all buildings, improvements, appurtenances, equipment and facilities used or maintained in connection with such gaming.

"Gaming Monitor" means the individual hired by and responsible to the Commission who is charged with monitoring and inspecting Gaming Operations and to whom certain duties may be delegated pursuant to this Ordinance.

"Gaming Operation" means any business enterprise owned by the Tribe, the revenues of which are primarily derived from Gaming, other than Class I Gaming, or from any Gaming Establishment.

"Gross Revenue" means the total value due to any operator of any Gaming for any chance taken or game played, for any table fees for card playing, on account of fees charged for participation in any Gaming or for admittance to any Gaming Establishment (or any combination of the foregoing). Gross Revenue shall be stated in U.S. currency and shall be calculated before any deductions or allowances for prizes, pay out of winnings, costs of operation, taxes, labor expenses, equipment, materials used or any other expenses. In the absence of adequate records, Gross Revenue shall be the maximum amount that would be due to a Gaming operator if the particular Gaming conducted by said operator was conducted at maximum capacity.

"Key Employee" means:

- (a) a person who performs one or more of the following functions
 - (1) bingo caller,
 - (2) counting room supervisor,
 - (3) chief of security,
 - (4) custodian of gaming supplies or cash,
 - (5) floor manager,
 - (6) pit boss,
 - (7) dealer,
 - (8) croupier,
 - (9) approver of credit, or
 - (10) custodian of gambling terminals or other devices operated by the management of any Gaming Operation, including persons with access to cash and accounting records for such devices;
- (b) if not otherwise included, any other person whose total cash compensation from employment in any Gaming Operation exceeds \$25,000 per year;
- (c) if not otherwise included, the four most highly compensated persons in any Gaming Operation; or
- (d) any employee of any Gaming Operation that the Commission deems a Key Employee.

"License" means a revocable privilege granted by the Commission, pursuant to this Ordinance, to any Person which authorizes such Person to perform certain acts or engage in certain activities. The issuance of a License shall not create a property or liberty interest in such License for the benefit of the Licensee.

"Licensee" means any Person who has been issued a valid and current License pursuant to the provisions of this Ordinance.

"Management Contract" means any contract, agreement or other document establishing a relationship between the Tribal government and any Person, pursuant to which such Person has managerial responsibilities in or for any Gaming Operation. The term "Management Contract" shall include all collateral agreements to any relevant Management Contract.

“Management Entity” or **“Controlling Shareholder”** means:

- (a) any Person having a direct financial interest in any Management Contract, including, but not limited to, those Persons who own five (5) percent or more of any Management Entity’s outstanding capital stock;
- (b) when a trust is a party to a Management Contract, any beneficiary or trustee of such trust;
- (c) when a partnership is a party to a Management Contract, any partner, general or limited, in such partnership;
- (d) when a corporation is a party to a Management Contract, any Person who is an officer or director of such corporation, or who holds five (5) percent or more of the issued and outstanding capital stock of such corporation either alone or in combination with a spouse, parent, child or sibling; or
- (e) with respect to any non-natural Person with an interest in a trust, partnership or corporation that has an interest in a Management Contract, all beneficiaries, trustees, partners, or directors of, and five (5) percent stockholders of, such non-natural Person.

“Management Fee” means any monies paid from Gaming revenue to any Person with a contract or License to operate a Gaming Establishment. Such term shall not include monies paid for the operating expenses of such Gaming Establishment.

“Net Revenue” means Gross Revenue of any Gaming Operation minus amounts paid for, or paid out as prizes, winnings, and related operating expenses, excluding management fees.

“NIGC” means the National Indian Gaming Commission.

“Operating Expense” means any expense incurred in the operation of Gaming that is specifically designated as an Operating Expense in any Management Contract.

“Ordinance” means this Tribal Gaming Ordinance of the Cow Creek Band of Umpqua Tribe of Indians as amended and restated as of _____, 1994.

“Patron” means any Person on Trust Land who participates in Gaming, or who is physically present on premises wherein or whereon Gaming is conducted.

"Person" means any association, partnership, corporation, firm, trust or other form of business association or entity, as well as a natural person.

"Primary Management Officials" means:

- (a) the Person(s) having management responsibility over all or any part of any Gaming Operation;
- (b) any Person who has authority;
 - (i) to hire and fire employees of a Gaming Operation,
 - (ii) to establish working policy for a Gaming Operation;
- (c) the chief financial officer or other Person who has financial management responsibility for any Gaming Operation;
- (d) any person who is considered a Controlling Shareholder; or
- (e) any Person the Commission deems a Primary Management Official.

"Rules" means any Rules of the Commission established pursuant to this Ordinance.

"Secretary" means the Secretary of the United States Department of the Interior.

"Tribal Court" means the Tribal Court of the Cow Creek Band of Umpqua Tribe of Indians, if such court exists.

"Tribe" means, and **"Tribal"** shall refer to, the Cow Creek Band of Umpqua Tribe of Indians.

"Trust Land" or **"Reservation"** means any lands, title to which is either held in trust by the United States for the benefit of the Cow Creek Band of Umpqua Tribe of Indians, or held by the Cow Creek Band of Umpqua Tribe of Indians subject to restriction against alienation by the United States and over which the Cow Creek Band of Umpqua Tribe of Indians exercise governmental authority.

**CHAPTER I
PURPOSE, APPLICABILITY AND AUTHORIZATIONS**

Section 1.01 **Purpose.** The Board of Directors of the Cow Creek Band of Umpqua Tribe of Indians, pursuant to authority granted in Article VII, the Tribe's Constitution, enacts this Ordinance in order to regulate all forms of Gaming on Trust Lands.

Section 1.02 **Class I Gaming Authorized.** Class I Gaming is hereby authorized to be conducted on lands within the jurisdiction of the Tribe.

Section 1.03 **Class II Gaming Authorized.** Class II Gaming is hereby authorized to be conducted on lands within the jurisdiction of the Tribe; provided, however, that such Class II Gaming shall be conducted only in accordance with the provisions of this Ordinance, the Rules, the Compact, and IGRA.

Section 1.04 **Class III Gaming Authorized.** Class III Gaming is hereby authorized on lands within the jurisdiction of the Tribe; provided, however, that Class III Gaming shall be conducted only in accordance with the provisions of this Ordinance, the Rules, the Compact, and IGRA.

Section 1.05 **Location of Gaming.** The Commission shall ensure that (i) such Gaming as it authorizes and licenses pursuant to this Ordinance is conducted on lands within the Tribe's jurisdiction, and (ii) such gaming is not otherwise specifically prohibited by Federal law.

Section 1.06 **Ownership of Gaming.** The Tribe shall have the sole proprietary interest in any Gaming Operation authorized by this Ordinance. The Tribe shall receive, at a minimum, not less than sixty (60) percent of the Net Revenues from any Gaming Operation.

Section 1.07 **Use of Gaming Revenue.**

(a) Net Revenues from any form of Gaming authorized under this Ordinance, other than Class I Gaming, shall be used only for the following purposes: to fund Tribal government operations and programs; to provide for the general welfare of the Tribe and its members; to promote Tribal economic development; to make donations to charitable organizations; or to help fund operations of local government agencies.

- (b) If the Tribe elects to make per capita payments to Tribal members, it shall authorize such payments only pursuant to a plan submitted to and approved by the Secretary pursuant to 25 U.S.C. §2710(b)(3).

Section 1.08 **Unauthorized Gaming.** Any person who commits any act of unauthorized Gaming on the Reservation or any other Tribal land shall be guilty of a crime and shall be prosecuted in Tribal Court or any other court of competent jurisdiction. It is hereby declared that authorized Class I Gaming, Class II Gaming or Class III Gaming conducted on the Reservation, or on any other Tribal land that fully complies with the provisions of this Ordinance, the Rules and IGRA shall not be subject to any criminal penalties. Gaming conducted in any Gaming Establishment in violation of a Management Contract, or at such time as any provision of a Management Contract is being breached by the manager under such Management Contract, shall be considered unauthorized Gaming.

Section 1.09 **Conduct of Games.** No Person licensed by the Commission shall engage in, conduct or condone any Gaming, other than Class I Gaming, that is not conducted in accordance with such Rules governing the conduct of games as may be promulgated by the Commission under this Ordinance.

Section 1.10 **Applicability of Ordinance.** Unless specifically indicated otherwise, all provisions of this Ordinance shall apply to both Class II Gaming and Class III Gaming including, but not limited to, all licensing and background investigation procedures.

CHAPTER II ADMINISTRATION AND ENFORCEMENT

Section 2.01 **Establishment of Commission.** The Cow Creek Tribal Gaming Commission is hereby established. The Commission shall consist of nine (9) members appointed by a majority vote of the Board. These nine (9) members of the Commission shall be composed of four (4) non-Tribal members and five (5) Tribal members. A Commissioner shall serve for six (6) years and may be removed from office prior to the end of his term only for cause and by a unanimous vote of the Board after a public hearing, if such hearing is requested by the Commissioner who is subject to removal. In

order to establish an annually staggered Commission appointment schedule, the first Commission shall be appointed by the Board as follows: two (2) Commissioners shall serve a one (1) year term; two (2) Commissioners shall serve two (2) year terms; two (2) Commissioners shall serve three (3) year terms; one (1) Commissioner shall serve a four (4) year term; one (1) Commissioner shall serve a five (5) year term; and one (1) Commissioner shall serve a six (6) year term, for their initial terms only. Thereafter, all successive terms of appointment for Commissioner shall run for six (6) years. Vacancies on the Commission shall be filled within thirty (30) days by the Board. The Commission shall consist of not more than three (3) members of the Board.

Section 2.02 **Restrictions on Commissioners.** Commissioners may hold other paid positions within the Tribal Government and may engage in other business activities; provided, however, that Commissioners may not be employed in or by any Gaming Operation. When not performing official Commission functions, Commissioners may gamble in any Gaming Establishment.

Section 2.03 **Compensation of Commissioners.** Commissioners shall be compensated at a rate to be established annually by the Commission, subject to approval by the Board. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.

Section 2.04 **Selection of Chairperson.** The Commission shall select annually, from its membership, a Commission chairperson who shall have the power to convene special meetings of the Commission upon forty-eight (48) hours written or actual notice to Commissioners.

Section 2.05 **Meetings Open to Public.** General meetings of the Commission may be open to the public, at the discretion of the majority of the Commission. The Commission may, however, in its sole discretion, convene in Executive Session at any time.

Section 2.06 **Quorum.** A quorum of the Commission shall consist of five (5) Commissioners. All decisions shall be made by a majority vote of a quorum of the Commission, unless indicated otherwise in this Ordinance.

Section 2.07 **Reports.** The Commission shall make monthly reports to the Board within thirty (30) days after the end of each month. The reports shall include a full and complete statement of all Gaming revenues paid and owing to the Tribe, expenses and all other financial transactions of the Commission, and a summary of all licensing and enforcement actions taken or recommended by the Commission. The Commission shall also issue an annual report to the Board within thirty (30) days after the close of the Fiscal Year. Files and records of the Commission shall not be copied or removed without the express written consent of a majority of the Board.

Section 2.08 **Powers.** The Commission shall exercise all powers necessary to effectuate the purposes of this Ordinance. The Commission shall meet not less than once each month to make recommendations and set policies, to approve or reject monthly reports from the Gaming Monitor and to transact other business that is properly brought before the Commissioners. The Commission shall promulgate Rules for the operation of Gaming Establishments and shall hear and resolve all disputes regarding any provision of this Ordinance or the Rules. In all decisions, the Commission shall act to promote and ensure the integrity, security, honesty and fairness of the operation and administration of all Gaming other than Class I Gaming. In accordance with this Ordinance, including Chapter 3 and Chapter 4, the Commission shall have the power and authority to deny any application for License, to limit, cancel, revoke, terminate, condition, modify, suspend, or restrict any License, to make findings of suitability, and approve the imposition of a fine for any cause deemed reasonable by the Commission upon any Person holding a license. The Commission shall conduct background investigations on all Applicants and Licensees. Within the limits of its Board approved budget, the Commission shall employ and fix the salaries of, or contract for the services of, such professional, technical and operational personnel and consultants as the execution of the Commission's duties may require.

Section 2.09 **Administrative Hearings.** The Commission may hold administrative hearings to resolve any issue arising under this Ordinance. Such hearings shall be conducted according to the Rules. In order to fully exercise the power granted under this Chapter, the Commission may issue subpoenas in accordance with the Rules.

Section 2.10 **Voting on Licensing.** Any Commission vote on the question of approving, disapproving, revoking, suspending, limiting or conditioning a License shall be by secret ballot; provided, however that in an emergency (as determined by a majority of a quorum of the Commission) a secret phone vote may be polled pursuant to Commission regulations. Should an Applicant disagree with a licensing vote of the Commission, the Applicant may appeal the vote pursuant to the appeals procedures set forth in this Ordinance and in the Rules. At any appeal hearing, the Applicant shall have the burden to show cause why the Commission's determination was incorrect.

Section 2.11 **Commission Findings.** Following any Commission hearing conducted in accordance with the Rules, the Commission shall, within a reasonable period of time, reach a determination concerning:

- (a) the accuracy of any preliminary certification of facts reached at such hearing;
- (b) if applicable, whether the License in question should be granted, continued, suspended, revoked, conditioned, or limited; and
- (c) whether or not any other action recommended to the Commission including, but not limited to, forfeitures and fines, should be taken or imposed.

Section 2.12 **Notification of Commission Decision.** Within a reasonable period of time following a Commission finding reached in accordance with Section 2.11 of this Ordinance, the Commission shall inform all affected parties in writing of such finding.

Section 2.13 **Right of Appeal; Appeals Procedures.** A Person directly affected by any finding of the Commission pursuant to Section 2.11 of this Ordinance shall have the right to appeal such finding to the Tribal Court or, if the Tribal Court does not exist, the appeal shall be heard by the Board. Any such appeal must be filed with the Tribal Court or Board in writing on or before the tenth (10th) day following receipt by such affected Person of the written finding of the Commission. The Commission shall certify the hearing record to the Tribal Court or the Board within thirty (30) days of the date of the filing of the appeal. In any case which has been referred to the

Tribal Court or Board for final action, the Tribal Court or Board shall review the finding of the Commission pursuant to a "clearly erroneous" standard. Decisions of the Commission interpreting this Ordinance or other applicable law shall be affirmed unless the Tribal Court or Board finds that the Commission's action was arbitrary and capricious. The Tribal Court's or Board's decision shall be final, and no further appeal may be had.

Section 2.14 **Appointment of Gaming Monitor.** Subject to approval by the Board, the Commission shall hire a Gaming Monitor who shall be responsible for the day to day monitoring of Gaming on Trust Lands and to whom the Commission may delegate any of its duties under this Ordinance except for the conduct of hearings, the decision of matters at issue at such hearing, the issuance, limitation, supervision or revocation of Licenses, and the imposition of fines and the setting of the Gaming Monitor's duties and compensation. The Commission shall conduct a background investigation on the Gaming Monitor before his appointment, and the Commission shall oversee the Gaming Monitor's activities on an ongoing basis. Preference will be given to Gaming Monitor applicants with experience in legal, gaming and/or accounting matters. No Person who has been convicted of a felony of any kind or of any misdemeanor related to illegal gambling or bribery may serve as a Gaming Monitor. Other than the interest held by virtue of Tribal membership, the Gaming Monitor shall not have any personal financial interest in any Gaming Operation.

Section 2.15 **Gaming Monitor's Contract.** The Gaming Monitor shall be hired on a contract basis for a period of at least one year. The terms of the Gaming Monitor's employment contract including, but not limited to, compensation and benefits, shall be negotiated with the Commission and approved by the Board.

Section 2.16 **Termination of Gaming Monitor.** The Gaming Monitor's employment contract shall terminate immediately, and without the necessity of a vote or finding by the Board or the Commission, upon the Gaming Monitor's conviction in any court of competent jurisdiction, including the Tribal Court, for any felony or for any misdemeanor related to illegal gambling or bribery, or for any charge related to the Gaming Monitor's honesty or ability to fulfill his duties. If the Commission, the Board or the Tribal Court determines that the Gaming Monitor has violated, or assisted in violations of, any part of this Ordinance, the Commission or the

Board (by a majority vote of a quorum) may immediately terminate the Gaming Monitor's employment contract.

Section 2.17

Duties of the Gaming Monitor The Gaming Monitor shall, subject to the approval of the Commission, perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes of this Ordinance and the Compact. In all decisions, the Gaming Monitor shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all Gaming. The duties of the Gaming Monitor shall include, but are not limited to:

- (a) ensuring that the managers and Key Employees of all Gaming Operations are carrying out their responsibilities as provided for in any relevant Management Contract;
- (b) corresponding with the NIGC and taking necessary actions to comply with the rules and regulations of the NIGC. Specifically, the Gaming Monitor shall confirm that an annual outside audit of authorized Gaming is performed within the time required by IGRA, and will provide a copy of such outside audit to the NIGC in a timely manner;
- (c) ensuring that adequate background investigations are conducted on all Primary Management Officials and Key Employees of any Gaming Operation, and that oversight of such Persons is conducted on an ongoing basis;
- (d) ensuring that all applications and background investigations called for by this Ordinance are properly completed and that no Person is employed in any Gaming Operation if that Person's prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of Gaming. The Gaming Monitor shall ensure that the NIGC receives the results of any background checks conducted on Primary Management Officials and Key Employees of any Gaming Operations;
- (e) reviewing all records, documents or other evidence and information necessary and pertinent to the enforcement of

any provision of this Ordinance, the Rules, the Compact, or IGRA;

- (f) recommending to the Commission whether sanctions should be imposed on any Person pursuant to the provisions of this Ordinance; and
- (g) performing any and all other duties as may be required by the Compact, this Ordinance, the Commission, the Rules, or IGRA.

Section 2.18 **Right of Inspection.** The Commission and the Gaming Monitor have the authority to:

- (a) inspect and examine all premises wherein Gaming is conducted, or gambling devices or equipment are manufactured, sold or distributed; and
- (b) inspect all equipment and supplies in, upon or about any Gaming Establishment, and/or inspect any premises, equipment or supplies wherever located, which may be or have been used in connection with Gaming.

Section 2.19 **Organization of Commission.** The Commission may organize itself into any functional division it deems necessary, and may alter such plan of organization as it deems expedient.

Section 2.20 **Budget.** The Commission shall establish a budget for its operations, including, but not limited to, a budget for the Gaming Monitor, shall acquire such furnishings, equipment, supplies, stationery, books and other items as it deems necessary or desirable to carry out its functions, and incur such other expenses, within the limit of funds available to it, as it deems necessary. Such Commission budget shall be subject to approval by the Board and, once approved by the Board, shall be funded from the Tribe's general revenues. The Commission budget may, at the Board's discretion, be reviewed and modified by the Board every four (4) months. Any surplus remaining in the Commission's budget at the end of any budget year shall be refunded to the Board. The Commission and Gaming Monitor shall keep and maintain all files and records necessary for the effective regulation of Gaming and all such files and records shall be open to inspection by members of the Board. The annual

Commission budget shall be made available to any Tribal member, by supervised appointment.

Section 2.21 **Sanctions.** Any person who engages in Gaming in violation of any provision of this Ordinance, including any person who unlawfully trespasses upon any premises licensed by the Ordinance without the consent of the licensee and/or the Commission, shall be subject to criminal and civil penalties provided for under this Ordinance or other applicable laws.

Section 2.22 **Limitations Period.** No fine shall be assessed, nor any action taken, for any violation under Section 2.22 of this Ordinance unless a charge is filed in proper form with the Commission or Tribal Court within two (2) years of the commission of the offense.

Section 2.23 **Gifts or Other Compensation.** The Gaming Monitor, Commissioners, and members of the Board and their immediate families shall receive no compensation, gift, reimbursement or payment of any kind from any person doing business or desiring to do business with the Tribe, relating to Gaming, nor with any person wishing to obtain an unfair advantage in any Gaming, except as approved by a vote of the majority of the Board. Any property received in violation of this Section, including cash payments, shall be immediately forfeited to the Tribe, and the offending Person(s) shall be prosecuted to the full extent possible for accepting a bribe. The Commission and the Board shall cooperate to the fullest extent possible with any Federal or State law enforcement agency to pursue prosecution of such Person(s) under applicable Federal or State law.

Section 2.24 **Independence of Commission.** In all matters within its purview and responsibilities, the Commission shall be and act independently and autonomously from the Board.

Section 2.25 **Promulgation of Gaming Rules.** The Commission may promulgate Rules governing the conduct of all games authorized by the Compact or IGRA, including Rules governing the equipment, (chips, cards, tiles, etc.), used in such games. Any provision in the Compact providing for notice to, and comment by, the State of Oregon, shall be complied with by the Commission in promulgating the Rules.

Section 2.26 **Approval of Gaming Equipment.** The Commission shall have the discretion to review and approve all equipment and devices used in

connection with any Gaming Operation as to quality, design, integrity, fairness, honesty and suitability. In addition:

- (a) the Commission may require a prototype or sample of any piece of equipment or any device used in a Gaming Operation to be placed in the custody of the Gaming Monitor and retained by him as a control for comparison proposes; and
- (b) any evidence that any equipment or device used in a Gaming Operation has been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of such equipment or device, or any Gaming in which such equipment or device is used, shall be immediately reported to the Commission.

Section 2.27 **Posting of Rules.** The Rules of each authorized game offered at any duly licensed Gaming Establishment shall be posted in a conspicuous location in such Gaming Establishment.

Section 2.28 **Civil Violations.** Any person who violates or fails to comply with any provision of this Ordinance or the Rules, makes false or misleading statements or omissions in any application required under this Ordinance, or makes any false or misleading responses to any order or directive of the Commission may be found by the Commission to be liable for the civil penalties set forth in Section 2.29.

Section 2.29 **Civil Penalties.** For any violation described in Section 2.23 or Section 2.28 of this Ordinance, the violator may be subject to suspension and/or revocation of any License granted under this Ordinance, may be subject to exclusion from any Gaming Establishment, and may also be liable for a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation. Each day during which a violation of, or failure to comply with, this Ordinance or the Rules, occurs or is continuing to occur, may constitute a separate violation under this Ordinance, at the discretion of the Commission. The Commission, upon its own motion or for good cause shown, may rescind or reduce any penalties imposed pursuant to this Ordinance.

Section 2.30 **Consent to Jurisdiction.** Any person who applies for a License under this Ordinance, applies for employment in any Gaming

Establishment, enters into any contract or agreement related to Gaming, or participates in any Gaming on the Reservation, shall be deemed to consent to the civil jurisdiction of the Tribe, the Commission and the Tribal Court. Nothing in this Section shall limit the jurisdiction of the Tribe, the Commission or the Tribal Court under any circumstances not explicitly contemplated in the Section.

Section 2.31 **Civil Actions.** The Commission, on behalf of the Tribe, may bring suit in any appropriate forum for the collection of any fines due under this Ordinance and for the enforcement of any provision of this Ordinance or the Rules.

Section 2.32 **Tribal Court Jurisdiction.** The Tribal Court shall, to the extent not inconsistent with Federal law or the Compact, have civil and criminal jurisdiction over all matters arising under this Ordinance, the Rules, or related to the conduct of any gaming occurring on the Reservation, whether authorized or unauthorized.

Section 2.33 **Sovereign Immunity of the Commission.** The Commission is hereby clothed with all the privileges and immunities of the Tribe, except as specifically limited by this Chapter or other Tribal law, including sovereign immunity from suit in any state, federal or tribal court. Except as provided in this section, nothing in this Chapter nor any action of the Tribe or the Commission shall be deemed or construed to be a waiver of sovereign immunity from suit of the Commission, or to be a consent of the Tribe or the Commission to the jurisdiction of the United States or of any state or any other tribe with regard to the business or affairs of the Tribe or the Commission to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe or the Commission, or to be a consent of the Tribe or the Commission to suit in respect to any Indian land, or to be a consent of the Tribe or the Commission to the alienation, attachment or encumbrance of any such land.

Section 2.34 **Sovereign Immunity of the Tribe.** All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence and activities of the Commission are hereby expressly reserved, including sovereign immunity from suit in any State, Federal or Tribal Court. Except as provided in Section 2.35, nothing in this Ordinance nor any action of the Commission shall be deemed or construed to be a waiver of sovereign immunity from

suit of the Tribe, or to be a consent of the Tribe to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Commission or the Tribe, or to be a consent of the Tribe to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe; or to be a consent to suit in respect to any Indian land, or to be a consent to the alienation, attachment or encumbrance of any such land.

Section 2.35

Waiver of Sovereign Immunity of the Commission. Sovereign immunity of the Commission may be waived only by resolutions of both the Commission and the Board. All waivers of sovereign immunity must be preserved by resolutions of continuing force and effect by the Commission and the Board. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Commission. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds subject thereto, court having jurisdiction pursuant thereto and law applicable thereto. No waiver of sovereign immunity shall be deemed a consent to a) the levy of any judgment or, lien or attachment upon any property of the Commission or the Tribe (other than property specifically pledged or assigned pursuant to such waiver of sovereign immunity), b) suit with respect to any land within the exterior boundaries of the Reservation, or c) the alienation, attachment or encumbrance of any land within the exterior boundaries of the Reservation. Other than those Sections of this Ordinance which specifically authorize a waiver of sovereign immunity, this Ordinance shall not be interpreted as a waiver of sovereign immunity by Tribe or the Commission.

**CHAPTER III
LICENSING PROCEDURES**

Section 3.01

Gaming License Required. The Commission is hereby authorized to issue all Licenses for the conduct of all Gaming, other than Class I Gaming, authorized under this Ordinance or any other License related to Gaming which the Commission may require. The licensing requirements of this Ordinance are in addition to any state certificates or licenses required by the Compact.

- (a) **Persons.** The following Persons must obtain Licenses as a precondition to employment in or management of any Gaming Operation:
- (1) any Management Entity or Controlling Shareholder. Any Person deemed a Controlling Shareholder must comply with the same licensing requirements as if such Person were a Primary Management Official; however, if any Controlling Shareholder is a non-natural person, such Controlling Shareholder shall be subject to Management Entity licensing procedures;
 - (2) all Primary Management Officials;
 - (3) all Key Employees; and
 - (4) any other employee or class of employees as determined by the Commission.
- (b) **Facilities.** Each place, facility, or location where Gaming, other than Class I Gaming, is conducted must obtain a separate license from the Commission. A Gaming Establishment must obtain both a Class II License and a Class III License if both Class II and Class III Gaming, or just Class III Gaming, will be conducted at such Gaming Establishment.

Section 3.02

Standard for License. Licenses issued hereunder shall be issued according to requirements at least as stringent as those set forth at 25 C.F.R parts 556 and 558, and any amendments thereto, and, in the case of Class III Gaming Licenses, also according to requirements at least as stringent as those set forth in the Compact. The Board and the Commission reserve the right in any case to issue Licenses pursuant to standards which are more stringent than those required either by the NIGC or the Compact.

Section 3.03

Application for License.

- (a) No License shall be issued under this Ordinance except upon a sworn application filed with the Commission, in such form as may be prescribed by the Commission, containing a full and complete showing, at a minimum, of the following:

- (1) satisfactory proof that the Applicant is of good character and reputation, and is financially responsible;
 - (2) if applicable, a complete description of the premises at which Gaming will be conducted;
 - (3) agreement by the Applicant to abide by all conditions of the License, this Ordinance and the Rules;
 - (4) a separately sworn statement that neither the Applicant, nor any Management Entity or Controlling Shareholder of any Applicant, nor any of the Applicant's employees has ever been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses,
 - a. any felony, other than a felony conviction for an offense under b, c, or d, within the preceding ten (10) years; provided, however, that this record limitation to the preceding ten (10) years shall not apply to any applicant which is a Management Entity or Controlling Shareholder,
 - b. any gaming-related offense,
 - c. fraud or misrepresentation in any context, or
 - d. a violation of any provision of this Ordinance, the Rules, or any other ordinance or rules of the Tribe or any state agency regulating or prohibiting gaming; and
 - (5) the Applicant's fulfillment of all applicable requirements of IGRA, all provisions of this Ordinance, including, but not limited to, those in Chapter 4, and the Compact.
- (b) No License shall be issued to any Applicant who is determined by the Board or the Commission to be a Person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices,

methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto.

- (c) The issuance of Licenses shall also be subject to the provisions of Chapter 4 of this Ordinance regarding background investigations.
- (d) The following notice shall be placed on the application form for a Key Employee, Management Entity or a Primary Management Official before such form is completed by an Applicant:

“In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by Chapter 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by the Commission, the State of Oregon, and/or the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming License, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe’s being unable to hire you in a Primary Management Official or Key Employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.”

- (e) Key Employees, Management Entities, and Primary Management Officials hired prior to the effective date of this Ordinance shall be notified in writing that they shall either:
 - 1) complete a new application form that contains the Privacy Act notice set forth above, or
 - (2) sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice of any prior employment applications and related documents.

- (f) The following notice shall be placed on the application form for Key Employees, Management Entities or Primary Management Officials before such form is completed by an Applicant:

“A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, title 18, Section 1001).”

- (g) The Commission, in its sole discretion, may require any Key Employees, Primary Management Officials, hired prior to the effective date of this Ordinance, and any Management Entity or Controlling Shareholders who are party to a Management Contract that is in effect on the date of this Ordinance, to:
 - (1) complete a new License application form that contains the notice regarding false statements set forth above and undergo a new background investigation, or
 - (2) sign a statement that contains the notice regarding false statements, set forth above.

Section 3.04 **Procedures.** All applications shall be considered by the Commission in accordance with the Rules.

Section 3.05 **Authority to Issue License.** The Commission may grant or deny any application for a License, except that the Commission shall deny an application for a License, or for the renewal of a License, where the Applicant or Licensee does not meet the restrictions of Section 3.03(a)(4) of this Ordinance, in which case, the Applicant or Licensee

may proceed to make a record for findings by the Commission as to the Applicant's or Licensee's sufficient rehabilitation and present fitness to hold a License. Any License granted by the Commission shall be effective upon the date of its granting, which effectiveness shall be provisional as set forth in Section 3.07 of this Ordinance pending the satisfactory completion of all background investigations and pending expiration of the thirty (30) day NIGC review period provided for at 25 C.F.R. part 558; provided, however, that the Commission must provide written notice to the Board of the granting of any License, and the Board shall have the power to overturn the granting of any License on its own motion at any time provided the Board has conducted a hearing consistent with the provisions of this Ordinance and the Rules. If overturned by the Board, any License issued by the Commission shall have no force or effect.

Section 3.06 **Appeal of Denial of License.** Except as otherwise explicitly provided for in this Ordinance, an Applicant may appeal any denial of a License as provided in Rules.

Section 3.07 **Effectiveness of License.** The Commission may issue provisional licenses pending the satisfactory completion of all background investigations and other requirements of this Ordinance, IGRA, the Compact or any other agreement to which the Tribe is a party, and, if applicable, pending expiration of the thirty (30) day NIGC review period provided for at 25 C.F.R part 558. If such background investigations are not satisfactorily completed, a provisional License shall have no further force or effect. In no event shall a provisional License be valid for greater than ninety (90) days. Upon the satisfactory completion of all required background investigations, including NIGC review, the Commission may issue a License which shall be effective for one year unless it is canceled, revoked, suspended, terminated, modified or otherwise limited as provided for by this Ordinance.

Section 3.08 **Term of License; License Fees.**

- (a) Licenses shall be for a term of one year, and shall expire on the anniversary of the effective date of such License(s).
- (b) In order for the Tribe to recover the costs of complying with federal, Tribal, and state regulatory processes applicable to

Class II Gaming and Class III Gaming, annual License fees shall be imposed:

- (1) in the amount of \$25,000.00 per year on each party, other than the Tribe, to a Management Contract;
- (2) on any Person(s) required to obtain a License, in accordance with a fee schedule to be established by the Commission; and
- (3) in addition to the License fees imposed pursuant to subsection (b)(1) and (2) of this Section, the Commission may impose such fees on Licensees as are reasonably related to costs of enforcement, including investigations and proceedings before the Commission, and which will in the aggregate be sufficient to enable the Tribe and/or the Commission to recover its reasonable costs of enforcing this Ordinance. Such costs may be estimated by the Commission and imposed prior to a final Commission action regarding a particular Licensee or Applicant.

Section 3.09

Conditions of License. All Licensees shall comply with such reasonable conditions as may be fixed by the Commission, including but not limited to the following conditions:

- (a) Facility Licensees--
 - (1) the Licensee shall at all times maintain an orderly, clean and neat Gaming Establishment, both inside and outside the premises of the Gaming Establishment;
 - (2) the Gaming Establishment shall be subject to patrol by the Tribe's security and law enforcement personnel and, when authorized, local and state law enforcement, and the Licensee shall cooperate at all times with such security and law enforcement officials;
 - (3) the Gaming Establishment shall be open to inspection by authorized Tribal officials at all times during business hours;

(4) there shall be no discrimination in any Gaming Operations by reason of race, color, sex or creed; provided, however, that nothing herein shall prevent the Licensee from granting preferences to Native Americans as permitted by law; and

(b) Persons and Management Entities licensed by the Commission shall comply with such conditions of the License as the Commission, in its reasonable discretion, may require.

Section 3.10 **Required Notifications.** The Commission shall promptly notify the NIGC or other appropriate federal regulatory body of the issuance or denial of any License.

Section 3.11 **Assignment or Transfer.** No License issued under this Ordinance may be assigned or transferred unless the proposed assignee or transferee would independently be qualified to hold the License proposed to be assigned or transferred and the Board by resolution approves of such assignment or transfer.

Section 3.12 **Cancellation or Suspension.** Licensees and Applicants shall be legally responsible for any violation by their employees of this Ordinance, any relevant License provisions or the Rules of the Commission. Any License issued hereunder may be canceled, limited, revoked, suspended, terminated or modified by the Commission for the breach of any of the provisions of the License, this Ordinance, or the Commission Rules. In addition:

(a) unless otherwise stated in this Ordinance or the Rules, a Licensee's attorney has the right to be present and to participate in any proceeding concerning the cancellation, limitation, revocation, suspension, termination or modification of a License;

(b) a License may be summarily suspended for good cause for up to thirty (30) days, without a prior hearing, by a majority vote of a quorum of the Commission; provided, however, that a License may be suspended during such period without a vote by the Commission upon notice to that effect from the NIGC; and

- (c) all decisions of the Commission regarding the cancellation, limitation, revocation, suspension, termination or modification of Licenses shall be final, unless appealed as provided in the Rules, except that a License canceled by the Commission pursuant to an objection itemized by the NIGC as provided in Section 4.07 of this Ordinance may not be appealed. There shall be no right of appeal of any temporary suspension decision, and no Gaming shall be conducted by any Licensee during a period of License suspension. No Gaming shall be conducted by the Licensee after cancellation, even during the pendency of an appeal.

Section 3.13 **Notice of Licensing Actions.** The Commission and the Board shall post public notices of all actions taken in regard to Licenses and License applications in a prominent place in the Tribe's offices and in affected Gaming Establishments and may publish such notices in a newspaper serving the community in which the affected Gaming Establishments are located.

Section 3.14 **Provisional Employment Pending Issuance of License and During Temporary License Period.** As provided in Section 3.07, Primary Management Officials and Key Employees may be employed in Gaming Operations prior to the issuance of a License hereunder and during the period that a License shall be effective on a provisional basis, but such employment shall be provisional only and subject to the requirements of this Section. Employment may begin prior to issuance of a License only if the Commission, or such other Tribal agency or official as may be authorized by the Board, has made a preliminary finding of eligibility for employment in Gaming Operations, which shall require a preliminary determination that the Primary Management Official or Key Employee in question is not a person whose prior activities, criminal record or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto. Provisional employment shall be terminated upon the occurrence of any of the following:

- (a) denial of a relevant License by the Commission or the Board;

- (b) unsatisfactory completion of a background investigation or NIGC review resulting in nullification of a provisional License, as described in Section 3.07; or
- (c) to the extent required under 25 C.F.R part 558 and, at the end of thirty (30) days after the starting date of provisional employment, if at the end of such period no License has been issued hereunder or if a License issued hereunder remains effective only on a provisional basis, as provided in Section 3.07; provided, however, that provisional employees terminated for the reason described in this subsection shall be qualified for reemployment upon the satisfactory completion of background investigations and NIGC reviews.

Section 3.15

Parameters of License. Violations of any provision of this Ordinance or the Rules, by a licensee, his agent, or employee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Tribe and the inhabitants of the Reservation, and shall be deemed grounds for refusing to grant or renew a License, suspension or revocation of a License, or shall constitute grounds for the filing of charges by the Commission or Gaming Monitor. Acceptance of a License, or renewal thereof by a Licensee, constitutes an agreement on the part of the Licensee to be bound by the provisions of this Ordinance and the Rules as they are now, or as they may hereafter be amended or restated, and to cooperate fully with the Gaming Monitor and the Commission. It is the responsibility of the Licensee to remain informed of the contents of this Ordinance, the Rules and all other applicable regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations.

Section 3.16

Licensing of Distributors. The Commission may require the purchase of an annual license by any Person engaged in selling, distributing, or otherwise supplying Gaming equipment or paraphernalia for use in connection with Gaming.

**CHAPTER IV
BACKGROUND INVESTIGATIONS**

Section 4.01 **Required Background Investigations.** Background investigations shall be conducted by the Commission on all Persons specified in Section 3.01 of this Ordinance.

Section 4.02 **Standards for Background Investigations.** All background investigations shall be conducted under the supervision and direction of the Commission to ensure that Gaming Operations shall not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of such Gaming. Such investigations shall be conducted according to requirements at least as stringent as those set forth at 25 C.F.R. parts 556 and 558, Section 4.03 of this Ordinance and the Compact. If the Commission or Board determines that employment of a Person poses a threat to the public interest or to the effective regulation of Gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of Gaming, a Gaming Operation shall not employ that person. In the case of background investigations of Primary Management Officials and Key Employees, the report required by 25 C.F.R. part 558, shall be prepared and submitted to the NIGC, and shall contain the required eligibility determination. All background investigations shall meet the standards for such investigations imposed by this Ordinance, IGRA and the Compact and shall be updated as required under this Ordinance, IGRA and the Compact, as applicable. Nothing herein shall prevent the conduct by the Commission or the Board of more comprehensive background investigations than those required under IGRA or the Compact.

Section 4.03A **Background Investigations.**

- (a) Each Person subject to a background investigation under Section 4.01 of this Ordinance shall be required to provide, subject to the Privacy Act of 1974, at a minimum, and in such form as may be prescribed by the Commission, all of the following information:

- (1) full name, other names used, social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (2) currently and for the previous 10 years, all business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
- (3) the names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the Applicant during each period of residence listed under subsection (a)(2) of this Section;
- (4) current business and residence telephone numbers;
- (5) a description of any existing and previous business relationships with any Native American Indian tribe, including but not limited to a description of the amount and type of ownership interest in those businesses;
- (6) a description of any existing and previous business relationships with the gaming industry generally, including but not limited to a description of the amount and type of ownership interest in those businesses;
- (7) the name and address of any licensing or regulatory agency with which the Person has filed an application for a license or permit related to any gaming or gambling, whether or not such license or permit was granted;
- (8) for each felony for which there is an ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
- (9) for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten (10) years of the date of the

application, the name and address of the court involved and the date and disposition;

- (10) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed, the type of criminal charge, the name and address of the court involved and the date and disposition of such charge;
 - (11) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
 - (12) a current photograph;
 - (13) any other information the Commission or the Board deems relevant; and
 - (14) fingerprints consistent with the requirements of 25 C.F.R. §522.2(h). The Oregon State Police are hereby identified as the law enforcement agency with law enforcement authority to take fingerprints of Key Employees and Primary Management Officials of all Gaming Operations.
- (b) Background investigations conducted by the Commission sufficient to make the determination described at Section 4.03B. In conducting a background investigation, the Tribe or its agents shall maintain the confidentiality of the identity of each Person interviewed in the course of investigation.
- (c) The Commission may require that an Applicant or Licensee submit any other information it deems relevant to an eligibility determination. The Commission may require an Applicant or Licensee to complete any additional forms the Commission deems necessary to conducting a thorough background investigation.

Section 4.03B **Eligibility Determination.** The Commission shall review an Applicant's prior activities, criminal record, reputation, habits and associations to make a finding concerning the eligibility of a

Management Entity, Controlling Shareholder, Key Employee, or Primary Management Official for employment in a Gaming Operation. With respect to a Management Entity or Controlling Shareholder, the Commission may consider, as part of its eligibility determination, previous oral representations made to members of the Tribe, the Commission or the Board by the Applicant.

Section 4.04 **Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission.**

- (a) When a Key Employee or Primary Management Official commences work at a Gaming Operation, the Commission shall within a reasonable period of time forward to the NIGC a completed application for employment for such Key Employee or Primary Management Official, conduct all necessary background investigations, and make the eligibility determination referred to in Section 4.03B.
- (b) The report referred to in Section 4.05 shall be submitted to the NIGC within sixty (60) days after a Key Employee or Primary Management Official commences work at a Gaming Operation or within sixty (60) days of the approval of this Ordinance by the Chairman.
- (c) No Gaming Operation shall continue to employ as a Key Employee or Primary Management Official any Person who does not have a License within ninety (90) days of commencing work at a Gaming Operation.

Section 4.05 **Report to the National Indian Gaming Commission.**

- (a) Pursuant to the procedures set out in Section 4.04, the Commission shall prepare and forward to the NIGC a report on each background investigation conducted by the Commission and relevant to the issuance of a License. Such report shall, at a minimum, include all of the following:
 - (1) steps taken in conducting the background investigation;
 - (2) results obtained;

- (3) conclusions reached by the Commission; and
 - (4) the Commission's basis for those conclusions.
- (b) The Commission shall submit with the report a copy of the eligibility determination made pursuant to Section 4.03B.
- (c) If a License is not issued to an Applicant, the Commission:
 - (i) shall notify the NIGC; and
 - (ii) may forward copies of its eligibility determination and any relevant report regarding a background investigation of the Applicant to the NIGC for inclusion in the Indian Gaming Individuals Records System.
- (d) With respect to Key Employees and Primary Management Officials, applications for employment and reports of background investigations shall be retained for inspection by the Chairman or his designee for no less than three (3) years from the date of termination of employment of each Key Employee or Primary Management Official.

Section 4.06 Granting a Gaming License.

- (a) If, within a thirty (30) day period after the NIGC receives all required applications and reports, the NIGC notifies the Tribe that it has no objection to the issuance of a License pursuant to a License application filed by a Key Employee or a Primary Management Official, the Commission may issue a License to such Applicant.
- (b) The Commission shall respond in a timely manner to requests for additional information from the Chairman concerning Key Employees or Primary Management Officials who are the subject of any report filed with the NIGC by the Commission. Any such request by the Chairman shall suspend the thirty (30) day period referred to in this Section until the Chairman receives the additional information requested.

- (c) If, within a thirty (30) day period after the NIGC receives all required applications and reports, the NIGC provides the Tribe with a statement itemizing objections to the issuance of a License to a Key Employee or to a Primary Management Official for whom the Commission has submitted an application and all required reports to the NIGC, the Commission shall reconsider the application, taking into account the itemized by the objections of the NIGC. The Commission shall make the final decision whether to issue a License to such Applicant.

Section 4.07 **License Revocation and Suspension Following Receipt of Information from NIGC.**

- (a) If, after the issuance of a License, the Tribe receives information from the NIGC indicating that a Management Entity or Controlling Shareholder, Key Employee, or Primary Management Official is not eligible for employment under Section 4.02 of this Ordinance, the Commission shall suspend such License, shall notify the Licensee in writing of such suspension and the potential revocation of the Licensee's License, and shall conduct a hearing in accordance with the Rules regarding the proposed License revocation.
- (b) After a hearing, the Commission shall revoke or reinstate a License suspended pursuant to subsection (a) of this Section. The Commission shall notify the NIGC of its decision. A decision of the Commission to revoke a License after the hearing called for by subsection (a) of this Section shall be final and there shall be no appeal. A Management Entity whose License has been revoked or suspended pursuant to this Section may not operate a Gaming Operation.

CHAPTER V
MANAGEMENT CONTRACTS

Section 5.01 **Commission Approval Required.**

- (a) Other than the Management and Economic Development Agreement with British American Bingo, Inc., dated October 11, 1991, any Management Contract entered into by the Tribe

must first be submitted to the Commission for approval, but, before approving such Management Contract, the Commission shall require and obtain the following information:

- (1) the name, address, and other additional pertinent background information of each Person having any direct financial interest in, or management responsibility under such Management Contract, and, in the case of a corporation which is a party to such Management Contract, the name, address, and other pertinent information of each individual who serves on the board of directors of such corporation and each stockholder, who directly or indirectly, holds five (5) percent or more of issued and outstanding stock of said corporation;
 - (2) a description of any previous experience that each Person listed pursuant to subsection (a)(1) of this Section has had regarding any contracts with Indian tribes (whether related to gaming or not) or with the gaming industry generally, including, but not limited to, the name and address of any licensing or regulatory agency with which such Person has had contact relevant to gaming; and
 - (3) a complete financial statement of each Person listed pursuant to subsection (a)(1) of this Section.
- (b) Any Person listed pursuant to subsection (a)(1) of this Section shall be required to respond to any written or oral questions that the Commission may propound in accordance with its responsibilities under this Section.
- (c) After the Commission has approved a Management Contract, the Commission shall, subject to approval by the Board, submit such Management Contract to the NIGC for its approval. No such Management Contract shall be valid until it has been approved by the NIGC.

Section 5.02 **Approval of Management Contracts.** The Commission may recommend approval of any Management Contract only if it determines that such Management Contract provides:

- (a) for the maintenance of adequate accounting procedures for any Gaming Operation contemplated under such Management Contract, and for verifiable financial reports to be prepared for the Board on a monthly basis by the managers of any Gaming Operation contemplated under such Management Contract;
- (b) for full access by Tribal officials to Gaming Operations conducted pursuant to the Management Contract; such officials shall have the right to verify the daily Gross Revenues from any such Gaming Operations;
- (c) for a minimum guaranteed payment to the Tribe that shall be paid prior to development and construction costs;
- (d) for a contract term not to exceed five (5) years, except that, upon the request of the Tribe, the Commission may authorize a contract term that exceeds five (5) years, but does not exceed seven (7) years, if the Commission is satisfied that the capital investment required, and the income projections for the particular gaming activity require additional time;
- (e) for grounds and mechanisms for terminating such Management Contract; provided, however that such termination shall not require approval of the Commission or the Board; and
- (f) for preference to members of the Tribe and their spouses, and those contributing to the maintenance of a tribal household, in the hiring of employees for any Gaming Operation conducted pursuant to the Management Contract.

Section 5.03 **Percentage-of-Net-Revenue Fees.** A Management Contract providing for a fee based upon a percentage of the Net Revenues of a Gaming Operation may be approved by the Commission, if such percentage fee is reasonable in light of surrounding circumstances. Except as provided in this Section, such fee shall not exceed thirty (30) percent, in the aggregate, of the Net Revenues of any Gaming Operation.

Section 5.04 **Contract Disapproval.** The Commission shall not recommend for approval any Management Contract if it determines that:

- (a) any Person listed pursuant to Section 5.01(a)(1)
 - (1) is a member of the Board or the Commission at such time said Management Contract is being considered for approval,
 - (2) has been, or subsequently is, convicted of any felony or any gaming offense,
 - (3) has knowingly and willfully provided material false statements or information to the Commission or to officials of the Tribe, or has refused to respond to questions posed pursuant to Section 5.01(b), or
 - (4) has been determined to be a Person whose prior activities, criminal record or reputation, habits, or associations pose a threat to the public interest, or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of Gaming or the carrying on of the business and financial arrangements incidental thereto;
- (b) any party to the Management Contractor has interfered or influenced (or attempted to interfere or influence) for its gain or advantage any decision or process of Tribal government relating to Gaming;
- (c) any party to the Management Contract fails to comply with the terms of the Management Contract or the provisions of this Ordinance, the Rules, the Compact or IGRA; or
- (d) any party to the Management Contract fails to obtain any required License.

Section 5.05 **Modifying or Terminating the Contract.** The Commission, after notice and hearing, shall have the authority to require modifications to any Management Contract. If the Commission determines that any of the provisions of this Ordinance, the Rules, the Compact or IGRA have been violated by any party to the Management Contract, the Commission may terminate the Management Contract. Such termination shall be effective

immediately upon the decision of the Commission to effect such termination and the affected parties may be excluded from any Gaming Operation; however, the party to the contract may appeal such termination pursuant to procedures contained in the Rules. Such appeal rights are limited and shall under no circumstances be considered an express waiver of sovereign immunity within the meaning of Section 2.35 of this Ordinance.

Section 5.06 **Conveying Interest in Land.** No Management Contract shall transfer or in any other manner convey any interest in land or other real property owned, controlled by, or held in trust for the Tribe.

Section 5.07 **Fees for Investigation Cost.** The Commission shall require all parties to the Management Contract, other than the Tribe, to pay a fee to cover the cost of the investigation necessary to reach the determinations in Section 5.02 and Section 5.04 of this Ordinance.

CHAPTER VI AUDITING AND INTERNAL CONTROL

Section 6.01 **Minimum Procedures for Control of Internal Fiscal Affairs.** The Commission shall promulgate Rules governing the control of internal fiscal affairs of all Gaming Operations. At a minimum, such Rules shall:

- (a) prescribe minimum procedures for the safeguarding of a Gaming Operation's assets and revenues, including recording of cash and evidence of indebtedness, and mandatory count procedures. Such Rules shall establish a controlled environment, accounting system, and control procedures that safeguard the assets of the Gaming Operation, assure that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to prescribed policies;
- (b) prescribe minimum reporting requirements to the Commission;
- (c) provide for the adoption and use of internal audits conducted in accordance with generally accepted accounting principles

by internal auditors licensed or certified to practice public accounting in the State of Oregon;

- (d) formulate a uniform code of accounts and accounting classifications to assure the consistency, comparability and effective disclosure of financial information. Such a code shall require that records be retained that reflect statistical drop (amount of cash wagered by Patrons), statistical win (amount of cash won by the Gaming Operation), and the percentage of statistical win to statistical drop, or provide similar information for each type of game in each Gaming Operation;
- (e) prescribe the intervals at which such information shall be furnished;
- (f) provide for the maintenance of documentation, (i.e., checklists, programs, reports, etc.), to evidence all internal work performed as it relates to the requirements of this Section; and
- (g) provide that all financial statements and documentation referred to in this Section be maintained for a minimum of five (5) years.

Section 6.02

Oversight of Internal Fiscal Affairs. The Commission shall require independent audits of the financial statements of all Gaming Operations. Such independent audits must:

- (a) be made according to generally accepted accounting principles by independent accountants licensed or certified to practice public accounting in the State of Oregon;
- (b) include an opinion, qualified or unqualified, or if appropriate, disclaim an opinion on the financial statements taken as a whole in accordance with standards of the accounting profession established by rules and regulations of the Oregon State Board of Accountancy and the American Institute of Certified Public Accountants;
- (c) disclose whether the accounts, records and control procedures maintained by the Gaming Operation conform with this Ordinance and the Rules; and

- (d) provide a review of the internal financial controls of the audited Gaming Operation to disclose any deviation from the requirements of this Ordinance and the Rules and report such findings to the Commission and the management of the audited Gaming Operations.

Section 6.03 **Conduct of Audit.**

- (a) The Commission or the Tribe shall cause to be conducted annually an independent audit of Gaming Operations and shall submit the resulting audit reports to the NIGC.
- (b) All Gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit described in Section 6.03(a).

Section 6.04 **Prohibition Against Embezzlement.** Any delay or action of any kind which, in the opinion of the Commissioner, is effectuated by any Licensee to unlawfully or improperly divert Gaming or other proceeds properly belonging to the Tribe, shall constitute grounds for taking disciplinary action against that Licensee. If the Commission finds an unlawful diversion was attempted, it shall sanction the Licensee. Sanctions may include the imposition of fines, and/or the revocation, suspension, or limitation of, or refusal to renew, any License.

Section 6.05 **Non-Compliance.** Failure to comply with the requirements of this Chapter, or the Rules promulgated hereunder shall constitute a per se violation of this Ordinance.

CHAPTER VII
EXCLUSION OR REJECTION OF INDIVIDUALS

Section 7.01 **Prohibition Against Certain Individuals.** It shall be a violation of this Ordinance for any Licensee to knowingly fail to exclude or eject from a Gaming Establishment any individual who:

- (a) is visibly under the influence of liquor, a drug or other intoxicating substance;

- (b) is under the age of eighteen years;
- (c) is displaying disorderly conduct;
- (d) is a known felon;
- (e) is known to have a reputation for cheating or manipulation of games; or
- (f) has been personally excluded, or is a member of any group or type of persons which has been excluded, for cause from Gaming Establishments by a resolution of the Commission.

Section 7.02 **Right to Exclude or Remove.** If the Commission deems it in the best interest of the Tribe, the Commission may exclude or remove any persons from the premises of any Gaming Operation. Any person so excluded shall be entitled to a hearing as provided for by the Rules.

CHAPTER VIII PROHIBITED ACTS

Section 8.01 **Prohibited Acts.** In addition to other civil and criminal acts that may be regulated or prohibited by this Ordinance, the Compact, other Tribal law or applicable federal law, the following shall constitute prohibited activities and/or unauthorized Gaming under this Ordinance and shall subject any perpetrator to Commission action, including, but not limited to, the imposition of civil penalties, referral to appropriate law enforcement authorities for criminal proceedings, and/or License suspension or revocation:

- (a) altering or misrepresenting the outcome of Gaming or other event on which wagers have been made after the outcome of such Gaming or event has been determined but before such outcome is revealed to the players;
- (b) placing or increasing a bet or wager after acquiring knowledge of the outcome of the Gaming or event which is the subject of the bet or wager, including past-posting and pressing bets;

- (c) aiding anyone in acquiring such knowledge referred to in subsection (b) of this Section for the purposes of increasing or decreasing any bet or wager, or for the purpose of determining the course of play;
- (d) claiming, collecting or taking, or attempting to claim, collect or take, money or anything of value in or from a game with intent to defraud or claiming, collecting or taking an amount greater than the amount actually won in such game;
- (e) knowingly to entice or induce another to go to any place where Gaming is conducted or operated in violation of the provisions of this Ordinance, with the intent that the other person play or participate in such Gaming;
- (f) reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;
- (g) manipulating, with intent to cheat or defraud, any component or part of a game in a manner contrary to the designed and normal operational purpose for such component or part, with knowledge that such manipulation will affect the outcome of the game, or with knowledge of any event that affects the outcome of the game;
- (h) defrauding the Tribe, any Licensee or any participant in any Gaming;
- (i) participating in any Gaming not authorized by this Ordinance;
- (j) knowingly providing false information or making any false statement with respect to an application for employment or for any License, certification or determination provided for in this Ordinance;
- (k) knowingly providing false or misleading information or making any false or misleading statement to the Tribe, the Board or the Commission in connection with any contract for services or property related to Gaming;

- (l) knowingly making any false or misleading statement in response to any official inquiry by the Commission or its agents;
- (m) offering or attempting to offer any thing of value, to a Licensee in an attempt to induce the Licensee to act or refrain from acting in a manner contrary to the official duties of the Licensee under this Ordinance, the Rules, IGRA or any contract related to Gaming;
- (n) acceptance by a Licensee of any thing of value with the expectation that receipt of such thing of value is intended, or may be perceived as intended, to induce the Licensee to act or refrain from acting, in a manner contrary to the official duties of the Licensee under this Ordinance, the Rules, IGRA or any contract related to Gaming;
- (o) falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to a Gaming Operation;
- (p) taking any action which interferes with or prevents the Commission or the Board from fulfilling its duties and responsibilities under this Ordinance, the Rules, IGRA or any contract related to Gaming; and
- (q) entering into any contract, or making payment on any contract for the delivery of goods or services to a Gaming Operation, when such contract fails to provide for or result in the delivery of goods or services of fair value for the payment made or contemplated.

Section 8.02

Prohibition Against Electronic Aids. Except as specifically permitted by the Gaming Monitor, with approval of the Commission, no person shall possess, with the intent to use in connection with Gaming, either individually, or in concert with others, any calculator, computer, or other electronic or mechanical device to assist in projecting the outcome or odds of such Gaming, to keep track of or analyze cards, or to change probabilities of any game or the playing strategies regularly utilized in such Gaming.

**CHAPTER IX
NATIONAL INDIAN GAMING COMMISSION
AND TRIBAL-STATE COMPACTS**

- Section 9.01** **National Indian Gaming Commission-Regulation.**
Notwithstanding any provision in this Ordinance or the Rules, the Commission is hereby fully empowered to comply with all regulations promulgated by the NIGC, including, but not limited to, reporting requirements relating to ordinances, contracts, license applications, background checks, and other information.
- Section 9.02** **National Indian Gaming Commission-Assessment.**
Notwithstanding any provision in this Ordinance or the Rules, the Commission is hereby fully empowered to comply with all assessments authorized by the NIGC. Such assessments shall be payable solely from funds of the Tribe derived from Gaming Operation revenues.
- Section 9.03** **Compact with the State of Oregon.** Notwithstanding any provision in this Ordinance or the Rules, the Commission is hereby fully empowered to comply with the provisions the Compact, including, but not limited to, any licensing, approval, or monitoring requirements contained in the Compact.

**CHAPTER X
MISCELLANEOUS**

- Section 10.01** **Security and Surveillance.** Each Gaming Establishment must provide for reasonable security within the Gaming Establishment at all times. All security personnel in a Gaming Establishment must be licensed by the Commission. The security and surveillance departments of any Gaming Operation must be separate and distinct departments. Such departments shall only interact when necessary to carry out their official duties.
- Section 10.02** **Maintenance of Ordinance and Regulations.** Each Licensee shall obtain, maintain or have access to a current a copy of this Ordinance and the Rules on any premises used for Gaming. The Ordinance and the Rules shall be produced by the Licensee and shown to any Person upon demand. That a Licensee may not have a current copy

of the Ordinance or the Rules, shall not in any way diminish the Licensee's obligation to abide by the Ordinance or the Rules.

Section 10.03 **Compliance with Other Laws.** The construction, maintenance and operation of any Gaming Operation shall be in a manner which protects the environment, public health and safety, and shall comply with all applicable Tribal and federal laws relating to environmental protection and public health and safety including, but not limited to, 25 C.F.R. §522.4(b)(7).

Section 10.04 **Amendments.** All provisions of this Ordinance are subject to amendment by the Board. All Rules promulgated by the Commission are subject to proper revision, repeal, or amendment by the Commission. All amendments to this Ordinance shall be effective upon the date of passage by the Board.

Section 10.05 **Severability.** If any provision any of this Ordinance, or any portion of any provision to this Ordinance, is found to be invalid by any court of competent jurisdiction, the full remainder of such provision(s) shall not be affected.

Section 10.06 **Words and Terms.** Tense, number and gender. In interpreting the provisions of this Ordinance, save when otherwise plainly declared or clearly apparent from the context:

(a) words in the present tense shall include the future tense;

(b) words in masculine, feminine and neuter genders shall include all genders; and

(c) words in the singular shall include the plural, and words in the plural shall include the singular.

Section 10.07 **Repeal.** To the extent that they are inconsistent with this Ordinance, all prior gaming laws, rules, ordinances or regulations of the Tribe are hereby repealed.

Section 10.08 **Unclaimed Winnings.**

(a) Any winnings, whether property or cash, which are due and payable to a participant in any Gaming Activity, and which remain unclaimed at the end of a Gaming session, shall be held in safekeeping for the benefit of such participant if his or

her identity is known. Such winnings shall be held for twelve months or such longer period as the Commission deems reasonable in consideration of all relevant facts and circumstances. The Commission shall make such efforts as are reasonable under the circumstances to locate such participant. At the end of the safekeeping period, such winnings shall revert to the ownership of the Tribe and shall be transferred to the account or place designated by the Board.

- (b) In the event the identity of a participant entitled to unclaimed winnings is unknown, the Commission shall use its best efforts to learn the identity of such individual and shall follow the procedure set forth in Section 10.08 if the Commission is able to identify such individual with reasonable certainty; provided, however, if after six months from the time the winnings were payable, the Commission has been unable to identify the individual entitled thereto, such winnings shall revert to the ownership of the Tribe.

Section 10.09 **Patron Disputes.** Any Person who has any dispute, disagreement or other grievance with the Gaming Operation that involves currency, tokens, coins, or any other thing of value, may seek resolution of such dispute from the following persons and in the following order: (a) a member of the staff relevant of the Gaming Operation, (b) the supervisor in the area of the relevant Gaming Operation in which the dispute arose, (c) the manager of the relevant Gaming Operation, and (d) the Commission.

Section 10.10 **Patron Rights Regarding Disputes.** When a Person brings a dispute for resolution pursuant to Section 10.9, the complainant has the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegations. At each level, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level as set forth in Section 10.9. Resolution of any dispute by the personnel of a Gaming Operation shall always involve two or more staff members. All disputes, whether resolved or not, shall be reported in detail by the staff persons involved to their supervisor, or, in the case of the general manager of the Gaming Operation, to the Commission.

Section 10.11 **Gaming Commission Action on Patron Disputes.** All disputes which are submitted to the Gaming Commission shall be decided by

the Commission based on information provided by the complainant, including any witnesses for, or documents provided by or for, the complainant. The decision of the Commission shall be in writing, shall be issued within fourteen (14) days of submission of the matter to the Commission, and shall be provided to the general manager of the Gaming Operation and to the complainant.

Section 10.12 **Agent for Service of Process.** The Board chairperson shall be designated agent for service of process for the Cow Creek Band of Umpqua Tribe of Indians.