July 11, 2006

Principal Chief Michell Hicks
Eastern Band of Cherokee Indians
88 Council House Loop
P.O. Box 455
Cherokee, NC 28719

Re: Amended Gaming Ordinance;
Ordinance No. 710 (2005)

Dear Principal Chief Hicks:

This letter is in response to the Eastern Band of Cherokee Indians' written request, received April 28, 2006, that the National Indian Gaming Commission ("NIGC") review and approve the Tribe's amended Tribal Gaming Ordinance ("Ordinance"). The Ordinance was adopted by the Tribal Council on September 20, 2005, by Resolution No. 710 (2005), and concerns Class II and III gaming. It is our understanding that the amended Ordinance replaces the current Tribal Gaming Ordinance, which was approved by the NIGC on October 24, 1996.

This letter constitutes approval, under the Indian Gaming Regulatory Act ("IGRA"), of the Eastern Band of Cherokee Indians' amended Tribal Gaming Ordinance. We note that the Ordinance is only approved for gaming on Indian lands, as defined in the IGRA, over which the Tribe has jurisdiction.

We further note that, missing from the Ordinance, are certain provisions which are normally included in gaming ordinances and which, by their absence, might cause some ambiguities. The following provisions, excerpted from the Ordinance, do not include the underlined language, which is explicitly set forth in IGRA and the NIGC's regulations:

1. [Subsection 16-1(jj)] *Primary management officials* means:
   (1) The person(s) having management responsibility <u>for a management contract</u>, or over all or any part of any gaming operation;
   (2) Any person who has authority:
      (i) To hire and fire employees of a gaming operation; or
      (ii) To establish working policy for a gaming operation;

(3) The chief financial officer or other person who has financial management responsibility for any gaming operation;
(4) Any person who is a controlling shareholder of a management contractor; or
(5) Any equivalent position in a gaming operation that the Commission designates by its rules as a primary management official.

2. [Sec. 16-1.07] Ownership of gaming. The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this chapter.

3. [Subsection 16-5.08(a)]
The Commission shall review an applicant's prior activities, criminal record, reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Commission determines that employment of the 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, then a management contractor or the gaming operation shall not employ that person.

While we interpret the Ordinance as implicitly, rather than explicitly, including these important phrases, we do recommend that the Tribe, in the future, revise the Ordinance to remove any ambiguities.

Finally, we thank the Tribe for its submission. We sincerely appreciate the cooperative spirit and professionalism exhibited throughout the ordinance review process. The NIGC staff and I look forward to continuing to work with you and the Tribe on gaming issues. If you have any questions, please feel free to contact Staff Attorney Katherine Zebell at (202) 632-7003.

Sincerely,

Philip N. Hogen
Chairman

cc: David Nash, Tribal Attorney General
George Skibine, Office of Indian Gaming Management, Dept. of Interior

TABLED
AMENDED
PASSED
SEP 20 2005

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: March 10, 2005

ORDINANCE NO. 710 (2005)
[third substitute; TGC/TCGE consensus]

WHEREAS the Eastern Band of Cherokee Indians has established two gaming enterprises and one regulatory body in compliance with the Indian Gaming Regulatory Act of 1988;

WHEREAS the authority of the Boards of Advisors responsible for overseeing, developing and expanding the Tribe's gaming business needs to be clarified to maximize the earnings potential for the Tribe;

WHEREAS independent regulation of the gaming operations, consistent with federal regulatory standards, by a Tribal Gaming Commission is an important component of a successful gaming operation;

WHEREAS it has been over eight years since the Tribal gaming ordinances were thoroughly reviewed and updated, and the attached ordinance has been developed based on guidance available from the National Indian Gaming Commission and detailed discussions among the TGC, and the TCGE/TBE Boards.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Chapters 16, 16A, and 16B of the Cherokee Code are hereby amended as set forth below.

BE IT FINALLY ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief, subject to approval by the National Indian Gaming Commission.

Submitted by the Principal Chief

Floor Amendments to Ordinance No. 710 (2005)
Agreed to by TGC, TCGE, and the Principal Chief and
Approved by Tribal Council on September 20, 2005 as Amended Below:

Chapter 16:

1. Subsection 16-1(n), beginning on page 2, line 4, is amended as follows:

(n) *Distributable net revenue* means all ~~net~~ revenue distributed to the Tribe by a gaming operation, which shall be calculated as follows: gross revenue of the gaming operation less (1) prizes and operating expenses, (2) payments owed to a management contractor, (3) debt service payments (including without limitation principal, interest, and related fees, costs, and expenses), and (4) contributions to duly authorized capital/expansion reserve funds. Distributable net revenue shall include surplus regulatory funds distributed to the Tribe by the Commission.

2. Subsection 16-1(z), beginning on page 4, line 24, is amended as follows:

(z) *Management contract* means any contract, agreement or other document approved by the NIGC, including all collateral agreements, establishing a relationship between the Tribal government and any person, pursuant to which such person has managerial responsibilities in or for any gaming operation. Nothing in this chapter shall be deemed to modify or amend a management contract approved prior the effective date of this ordinance amendment. ~~This chapter shall be read and interpreted in a manner that is consistent with an applicable management contract.~~

3. Subsection 16-1.08(b), beginning on page 8, line 2, is amended as follows:

(b) The Tribe has elected to make per capita payments, in the amount of 50% of distributable net revenue from both Class II and Class III gaming activities, to enrolled tribal members, and shall authorize and issue such payments only in accordance with a revenue allocation plan submitted to and approved by the Secretary of the Interior under 25 U.S.C. § 2710(b)(3), as set forth in chapter 16C of the Cherokee Code.

4. The second sentence of subsection 16-2.03(a), beginning on page 10, line 19, is amended as follows:

Each nominee ~~A person nominated by the Principal Chief to be a Commissioner~~ shall complete a license application and shall be subject to the same level of background investigation as required for a primary management official under this chapter.

5. Subsection 16-2.04(a), beginning on page 11, line 5, is amended as follows:

(a) While actively serving in any of the following capacities, no Principal Chief or Vice-Chief, member of the Tribal Council or a Board of Advisors, no judge or justice, no Tribal employee, and no employee of the Commission or any gaming operation owned by the Tribe, may serve on the Commission;

6. The second to last sentence of section 16-2.12, beginning on page 14, line 33, is amended as follows:

In addition to the foregoing reports, the Commissioners ~~Chair~~ shall meet upon request ~~a regular basis~~ with the Principal Chief.

7. Subsection 16-2.15(e), beginning on page 18, line 14, is amended as follows:

(e) Regulations establishing licensing procedures for gaming vendors:~~, *provided* that licenses shall not be required for vendors~~ vendors that are not gaming vendors as defined in section 16-1 ~~16.1, but such other vendors~~ may be required to register with, provide basic information to, and pay a nominal registration fee to the Commission; and

8. The last sentence of section 16-2.15, beginning on page 18, line 43, is amended as follows:

Except as specifically delegated by the Tribal Council in this chapter under the procedures established in this section, the Commission shall not have authority to promulgate or issue rules or regulations.

9. Subsection 16-5.03(a)(8), beginning on page 31, line 7, is amended as follows:

(8) For each felony, whether or not there is a conviction. ~~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;

Chapter 16A:

10. The last sentence of subsection 16A-3(b), beginning at page 3, line 25, is amended as follows:

At least one member of the Board of Advisors shall be an experienced auditor or certified public accountant, or shall have a Bachelor's Degree and significant financial and management experience in prior employment.

11. Section 16A-14, beginning at page 18, line 16, is amended as follows:

The Board members shall receive compensation and benefits at a level determined by Tribal Council resolution. This compensation shall be included in the Board's annual budget. Board members shall be reimbursed for actual expenses incurred on Board business, including necessary travel expenses. ~~Compensation, if any, of the Board members shall be determined by and approved by the Tribal Council and shall be paid from TCGE funds. Board Members shall be reimbursed from TCGE funds for all reasonable out-of-pocket expenses incurred while acting on behalf of the TCGE Board. Any such compensation and reimbursement shall be considered an operating expense of the TCGE.~~

Additional Floor Amendments Approved by Motion of Tribal Council to Ordinance No. 710 (2005) on September 20, 2005

Chapter 16:

1. Subsection 16-1(d), beginning on page 1, line 16, is amended as follows:

(d) *Capital/expansion reserve fund* means a gaming related reserve fund, together with interest earned thereon, established by a gaming operation or the Commission either (1) required by an NIGC-approved management contract or (2) specifically authorized for gaming related purposes by a Tribal Council ordinance.~~resolution~~.

2. Subsection 16-2.01(c), beginning on page 9, line 11, is amended as follows:

Commissioners may hold other positions of employment ~~with the Tribe~~ and may engage in business; provided, however, that they shall not engage in any business regulated pursuant to the provisions of this chapter.

3. The following new subsection is added to the end of Section 16-2.01, page 9, line 39:

(j) The Commission shall select annually, from its membership, a Commission Chair.

4. Subsection 16-2.13(d), beginning on page 15, line 30, is amended as follows:

(d) The Commission shall have the authority to establish, fund, and maintain capital/expansion reserve funds for (1) working capital in an amount recommended by the independent auditors, and (2) for such other purposes as are specifically authorized for gaming regulatory purposes by a Tribal Council ~~resolution~~ ordinance based on a detailed plan for use of the funds submitted by the Commission.

5. Section 16-2.17, beginning on page 19, line 25, is amended as follows:

The Commission is expected to work cooperatively with the Board of Advisors of a Tribal gaming operation, and shall meet with the Boards of Advisors on a regular basis to foster good business practices in compliance with applicable laws and regulations, resolve differences of opinion, and advance the interests of the Tribe. If a dispute arises with ~~a~~ the Board of Advisors regarding whether an issue is regulatory or operational, then the Commission and the Board shall make every good faith effort to resolve the dispute and then shall utilize the arbitration provisions of Section 16-2.15, if applicable and necessary.

Chapter 16A

6. Subsection 16A-5(c)(3), beginning on page 7, line 5, is amended as follows:

(3) Establish, fund, and maintain capital/expansion reserve funds, as defined in Section 16-1 of the Cherokee Code, for working capital, continuity of operations, reinvestment in or future expansion of a gaming operation, or such other gaming related purposes as are consistent with an approved master plan, *provided* that such funds are either (1) required by an NIGC-approved Management Contract, or (2) specifically authorized for gaming related purposes by a Tribal Council ~~resolution~~ ordinance to accomplish the goals of an approved master plan or other detailed plan for use of the funds submitted by the Board of Advisors;

Chapter 16B:

7. Subsection 16B-3, beginning on page 2, line 33, is amended as follows:

~~(a) Composition of the Board.~~ The Board of Advisors of the TBE shall be the same individuals who serve as the Board of Advisors of the Tribal Casino Gaming Enterprise pursuant to Section 16A-3, provided that they shall have the authority to select from among themselves different officers to lead the TBE, and the TBE shall be governed as a separate Tribal gaming enterprise. ~~shall be composed of three enrolled members of the Eastern Band of Cherokee Indians who must have clearly demonstrated their business acumen through past business or career successes. The TBE Board shall be separate and distinct from the Tribal Casino Gaming Enterprise Board established pursuant to chapter 16A.~~

~~(b) Appointment of the Board. Members of the Board of Advisors shall be appointed by the Principal Chief, subject to the approval of the Tribal Council. Nominees to the Board of Advisors shall be selected on the basis of their business experience and ability to significantly contribute to the capabilities and functions of the Class II Gaming. At least one member of the Board of Advisors shall be an experienced auditor or certified public accountant, or shall have a Bachelor's Degree and significant financial and management experience in prior employment.~~

~~(c) Members of the Board of Advisors may hold other positions of employment with the Tribe and engage in business; provided, however, that they shall not engage in any business regulated pursuant to the provisions of this chapter or chapter 16 of this Code.~~

~~(d) Except as provided in subsection (e), each member of the Board of Advisors shall serve a term of five years, subject to removal, with cause, by a majority of the Tribal Council. Nothing in this chapter shall be construed to preclude a member of the Board of Advisors from serving successive terms. There shall be a six-month probationary period for each new appointee to be reviewed by the Tribal Council.~~

~~(e) To ensure continuity in the Board and rotation of appointments, the initial Board members' terms shall be adjusted so that they serve staggered terms. Upon the effective date of this amendment, the Principal Chief shall assign first term expiration dates for each Board member, such that one member's term expires each year beginning September 30, 2008. The established rotation shall continue for each Board position for future new, renewal, or replacement appointments.~~

~~(f) No member of the Board of Advisors shall be finally approved until he or she has successfully completed a primary management official background investigation conducted by the Tribal Gaming Commission as provided in chapter 16 of this Code.~~

~~(g) Before assuming office, each member of the Board of Advisors shall take the oath of office administered to Tribal Officers.~~

~~(h) Resignation from the Board of Advisors. A member of the Board of Advisors may resign at any time by providing the Principal Chief and Tribal Council with written notice of his or her intention to resign on a date certain. The resignation shall become effective on the date stated and need not be accepted by the Principal Chief or Tribal Council to be effective.~~

~~(i) Filling of vacancies in the Board of Advisors. A nomination to fill a vacancy in the Board of Advisors shall be made by the Principal Chief within 30 days after the date on which the vacancy becomes effective. The Principal Chief shall then submit the nominee's resume to the Tribal Council for their approval. Action by the Tribal Council shall occur within 30 days after receipt of the nomination from the Principal Chief.~~

8. Subsection 16B-5(c)(3), beginning on page 6, line 25, is amended as follows:

(3) Establish, fund, and maintain capital/expansion reserve funds, as defined in Section 16-1 of the Cherokee Code, for working capital, continuity of operations, reinvestment in or future expansion of a gaming operation, or such other gaming related purposes as are consistent with an approved master plan, *provided* that such funds are either (1) required by an NIGC-approved management contract, or (2) specifically authorized for gaming related purposes by a Tribal Council ~~resolution~~ ordinance to accomplish the goals of an approved master plan or other detailed plan for use of the funds submitted by the Board of Advisors;

9. Section 16B-15, beginning on page 16, line 2, is amended as follows:

The Board members shall receive compensation and benefits at a level determined by Tribal Council resolution. This compensation shall be included in the Board's annual budget. Board members shall be reimbursed for actual expenses incurred on Board business, including necessary travel expenses. ~~Compensation, if any, of the Board members shall be determined by and approved by the Tribal Council and shall be paid from TBE funds. Board members shall be reimbursed from TBE funds for all reasonable out-of-pocket expenses incurred while acting on behalf of the TBE Board. Any such compensation and reimbursement shall be considered an operating expense of the TBE.~~