NATIONAL
INDIAN
GAMING
COMMISSION

OCT 24 1996

Ms. Joyce C. Dugan, Principal Chief
Eastern Band of Cherokee Indians
P.O. Box 455
Cherokee, NC 28719

Dear Principal Chief Dugan:

This letter responds to your request to review and approve the amendment to the tribal gaming ordinance of the Eastern Band of Cherokee Indians (Tribe). The amendment to the ordinance was adopted by the Tribe by Resolution Number 238 on July 24, 1996. 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 amendments to 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.

Thank you for submitting the amendment to the tribal gaming ordinance of the Eastern Band of Cherokee. The NIGC staff and I continue to look forward to working with you and the Tribe in implementing the IGRA.

Sincerely,

Penny J. Coleman
for Harold A. Monteau
Chairman

cc: Patrick Lambert
Tribal Gaming Commission Attorney

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AUG - 1 1996

EASTERN BAND OF CHEROKEE INDIANS

TRIBAL GAMING ORDINANCE

ORDINANCE # 238 (1996)

passed
7/24/96

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DRAFT ONE
EASTERN BAND OF CHEROKEE INDIANS
TRIBAL GAMING ORDINANCE

AUG - 1 1996

DEFINITIONS

Definitions. Unless a different meaning 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 person, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any License described in or required by this Ordinance.

"Application" means a request for the issuance or renewal of a License described in or required by this Ordinance.

"Council" or "Tribal Council" means the Tribal Council of the Eastern Band of Cherokee Indians.

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

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

"Class III Gaming" means Class III gaming as defined in 25 U.S.C. §2703(8), and any regulations promulgated thereunder.

"Compact" means the "Tribal State Compact including all renewals, amendments, appendices, exhibits and other attachments thereto between the Eastern Band of Cherokee Indians and the State of North Carolina providing for the Conduct of Tribal Class III Gaming by the Eastern Band of Cherokee Indians."

"Commission" means the Cherokee Tribal Gaming Commission.

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

"Fiscal Year" means the period beginning at 12:01 am on October 1 of each year and ending at midnight, September 30 of the following year.

"Gaming" means any Class II Gaming or Class III Gaming activity, 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 affecting, in any way, the playing of any Gaming.

"Supplier of Gaming Goods and Services" means any Person who manufactures, sells, leases, distributes, supplies or makes modifications to, any Gaming Device of the Tribe and all Persons holding any direct or indirect financial interest in such Gaming Device Supplier.

"Gaming Establishment" means any premises where Gaming is operated or conducted on the Tribe's Reservation, and includes all buildings, improvements, appurtenances, equipment and facilities used or maintained in connection with such gaming.

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

"Gross Revenue" means the total of all of the following, less the total of all cash paid out as losses to patrons and any items made deductible as losses by calculation of Gross Revenues:

(i) cash received as winnings;

(ii) cash received in payment for credit extended by a licensee to a patron for the purposes of gaming; and

(iii) compensation received for conducting any game in which the licensee is not a part to a wager.

For the purposes of this definition, cash or the value of noncash prizes awarded to patrons in a contest or tournament are not losses.

The term does not include:

(i) counterfeit money or tokens,

(ii) coins of other countries which are received in gaming devices or gaming devises;

(iii) cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed; or

(iv) cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

Calculation of Gross Revenues. Certain expenses not deductible.

(1) In calculating gross revenue, any prizes, premiums, drawings, benefits or tickets which are redeemable for money or merchandise or other promotional allowance, except money or tokens paid at face value directly to a patron as the result of a specific wager and the amount of cash paid to purchase an annuity to fund winnings must not be deducted as losses from winnings.

(2) In calculating gross revenue from gaming devices, the actual cost to the licensee of any personal property distributed to a patron as the result of a legitimate wager may be deducted as a loss, but not travel expenses, food, refreshments, lodging or services. For the purposes of this section, "as the result of a legitimate wager" means that the patron must make a wager prior to receiving the personal property, regardless of whether the receipt of the personal property is dependent on the outcome of the wager.

"<u>Key Employee</u>" 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 $50,000 per year;

(c) if not otherwise included, the four most highly compensated persons in any Gaming Operation; or

(d) any other employee of any Gaming Operation that the Commission designates by its Rules as a Key Employee.

"License" means any authorization granted by the Commission, pursuant to this Ordinance, to any Person which is required for 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, 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.

"Management Entity" or "Controlling Shareholder" means:

(a) any Person having a direct financial interest in any Management Contract, including 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 pursuant to an NIGC approved contract 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 or which by operation of Generally Accepted Accounting Principles, consistently applied, is so treated

"Ordinance" means this Tribal Gaming Ordinance of the Eastern Band of Cherokee Indians, as amended from time to time, and any Rules promulgated hereunder.

"Patron" means any Person 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, or

(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 designated by Commission Rules as a Primary Management Official.

"Reservation" means any lands, title to which is either held in trust by the United States for the benefit of the Eastern Band of Cherokee Indians, or held by the Eastern Band of Cherokee Indians subject to restriction against alienation by the United States and over which the Eastern Band of Cherokee Indians exercise governmental authority.

"Rules" means any Rules governing the conduct of games or the control of internal fiscal affairs of Gaming Operations as may be promulgated by the Commission established pursuant to this Ordinance.

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

"Tribe" means, and "Tribal" shall refer to, the Eastern Band of Cherokee Indians.

CHAPTER I

PURPOSE, PUBLIC POLICY, APPLICABILITY AND AUTHORIZATIONS

Section 1.01 Short Title. This Ordinance shall be known and may be cited as the "Eastern Cherokee Gaming Ordinance."

Section 1.02 Purpose. The Tribal Council of the Eastern Band of Cherokee Indians enacts this Ordinance in order to regulate all forms of Gaming on the Tribe's Reservation.

Section 1.03 Public Policy.

(a) All Gaming which is conducted within the Tribe's Reservation and which is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this Ordinance.

(b) The Tribal Council hereby finds, and declares it to be the public policy of the Tribe, that:

(1) Regulation of licensed Gaming is important in order that licensed Gaming is conducted honestly and that Gaming is free from criminal and corruptive elements.

(2) Public confidence and trust can only be maintained by strict regulation of all Persons, locations, practices, associations and activities related to the operation of licensed Gaming Establishments and the manufacture or distribution of Gaming Devices.

(3) All Management Entities or Controlling Shareholders, Primary Management Officials, Key Employees, Gaming Establishments and Suppliers of Gaming Goods and Services must therefore be licensed and controlled to protect the public health, safety, morals, good order and general welfare of the Tribe.

Section 1.04 Class II Gaming Authorized. Class II Gaming is hereby authorized to be conducted on lands within the Tribe's Reservation; provided, however, that such Class II Gaming shall be conducted only in accordance with the provisions of this Ordinance, the Rules, and IGRA.

Section 1.05 Class III Gaming Authorized. Class III Gaming is hereby authorized on lands within the Tribe's Reservation; provided, however, that Class III

Gaming shall be conducted only in accordance with the provisions of this Ordinance, the Rules, and IGRA.

Section 1.06 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 Reservation, and (ii) such gaming is not otherwise specifically prohibited by Federal law.

Section 1.07 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 seventy (70) percent of the Net Revenues from any Gaming Operation.

Section 1.08 Use of Gaming Revenue.

(a) Net Revenues from any form of Gaming authorized under this Ordinance 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) The Tribe shall make per capita payments of 50% of net revenues to Tribal members from both Class II and Class III gaming and it shall authorize such payments only pursuant to Tribal Ordinance No. 582 (1995) which was submitted to and approved by the Secretary pursuant to 25 U.S.C. §2710(b)(3).

Section 1.09 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.

Section 1.10 Conduct of Games. All Gaming shall be conducted by persons duly Licensed by the Commission. No Person licensed by the Commission shall engage in, conduct or condone any 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 1.11 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

ESTABLISHMENT, ADMINISTRATION AND POWERS OF COMMISSION

Section 2.01 Establishment of Commission. The Cherokee Tribal Gaming Commission having been previously established under prior Gaming Ordinances shall continue to consist of three (3) enrolled Tribal members. The Commission members currently serving in those positions shall upon ratification of this Ordinance continue in their capacity and shall then be subject to all terms, conditions, duties and responsibilities promulgated hereunder. All three (3) members of the Commission shall be enrolled Tribal members. A Commissioner shall serve for seven (7) years and may be removed from office prior to the end of the Commissioner's term by the Tribal Council only for cause and by a majority vote of the Council. Vacancies on the Commission shall be filled within thirty (30) days by nominations and a majority vote of the Council. The Commission shall select annually, from its membership, a Commission Chair.

Section 2.02 Independence of Commission. In all matters within its purview and responsibilities, the Commission shall be and shall act independently and autonomously from the Principal Chief and Tribal Council. No prior or subsequent review by the Principal Chief or Tribal Council of any actions of the Commission shall be required or permitted, except as otherwise explicitly provided in this Ordinance.

Section 2.03 Licensing of Commissioners. Nominees for the position of Commissioner must meet the requirements of Chapters 4 and 5 of this Ordinance and must first obtain a License from the Council prior to assuming office. A Commissioner shall complete a License Application and shall be subject to the same background investigation as a Key Employee under this Ordinance. Such background investigation shall be performed at the direction of the Council by a duly appointed agent of the Council. Upon completion of the background investigation, the Council shall, by majority vote, either (i) issue a License, or (ii) notice the Commissioner for a hearing before the Council. All investigations and hearings under this Section shall be conducted as provided in Chapter 6 of this Ordinance, except that all hearings shall be conducted by and before the Council.

(a) Failure to Meet License Requirements or License Violations. If the Tribal Council has reason to believe that a Licensed Commissioner fails at any time to meet the License requirements under this Ordinance or that the Commissioner has violated this Ordinance, the Rules, the Compact, or the IGRA and regulations promulgated thereunder or any other applicable law, the Tribal Council shall direct an investigation to be conducted and may

notice the Commissioner for a hearing before the Council. All investigations and hearings under this Section shall be conducted as provided in Chapters 5 and 6 of this Ordinance and a Commissioner shall have all of the rights and obligations given to a Licensee or Applicant therein, except that all hearings shall be conducted by and before the Council.

Section 2.04 **Restrictions on Commissioners.** No person shall serve on the Commission if that:

(a) person's other employment or responsibilities conflict or could potentially conflict with the duties and responsibilities of a member of the Commission;

(b) person is an employee of the Gaming Operation or the person's other employment or responsibilities create an impression or appearance of impropriety in the fulfillment of the duties and responsibilities of a member of the Commission; or

(c) person is a:

(1) Member or officer of the Tribal Council; or

(2) Judge in any Tribal Court.

Section 2.05 **No Financial Interest in Gaming.** No Commissioner shall have any direct or indirect financial interest in any Gaming Operation. For purposes of this section, indirect financial interest shall not include ownership of any mutual funds which holds stock in a publicly traded company but shall include direct ownership of such stock. No Commissioner may accept gratuities or any other thing of value from any Licensee or Applicant. Commissioners may not gamble in any Tribal Gaming Establishment.

Section 2.06 **Compensation of Commissioners.** Commissioners shall be compensated at a rate to be established annually by the Council. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.

Section 2.07 **Commission Meetings.**

(a) **Regular Meetings.** The Commission shall meet at least once a month at the Commission's main office or at any other designated meeting place.

(b) Special Meetings. Special meetings shall be convened by the Commission Chair as necessary to carry out the official duties of the Commission. Notice of each special meeting shall be given by the Commission Chair by telephone or mail to each Commissioner. Notice shall be received at least 24 hours in advance of such meeting and shall include the date, time and place of the proposed meeting.

(c) Emergency Meetings. An emergency meeting may be called by the Chair of the Commission with less than 24 hours notice; provided, however, that the Chair of the Commission shall use best efforts to assure that all Commissioners are notified of such meeting, with as much prior notice as possible under the circumstances.

(d) Meetings Open to the Public. All meetings of the Commission shall be open to the public; provided, however, the Commission may, in its discretion, close any portion of any meeting to the public when discussing any information which the Commission deems confidential pursuant to the provisions of this Ordinance.

Section 2.08 Commission Offices. The Commission shall maintain an administrative office. Such office shall serve as the Commission's main business office and shall be the site at which Commission records and documents are maintained and stored on a permanent basis. No individual except a Commissioner or other authorized employee or agent of the Commission may possess a key to or may enter any Commission office without the permission of the Commission. No person may access such records except a Commissioner, a person duly authorized by the Commission or an attorney for the Commission.

Section 2.09 Quorum. A quorum of the Commission shall consist of three (3) Commissioners. All decisions shall be made by a majority vote of a quorum of the Commission, unless indicated otherwise in this Ordinance.

Section 2.10 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 2.11 Commission Record-Keeping. The Commission shall maintain complete records regarding the following:

(a) Applications, financial statements, fingerprints, contracts, Licenses, suspension and cancellation notices and correspondences of all Applicants, including Management Entities or Controlling

Shareholders, Key Employees, Primary Management Officials, Gaming Establishments and Suppliers of Gaming Goods and Services;

(b) Commission Licenses;

(c) Meeting minutes from all Commission meetings;

(d) Compact compliance;

(e) Reports relating to customer disputes, complaints or other issues that affect the integrity of the Gaming Operation;

(f) Commission budget and expenditures;

(g) Council communications and correspondences;

(h) Gaming Device list pursuant to Section 4.11 of this Ordinance; and

(i) Any other records or documents the Commission deems necessary or appropriate.

Section 2.12 **Reports.** The Commission shall make quarterly reports to the Council within thirty (30) days after the end of each quarter. Such Reports shall contain the following information:

(a) number and types of Licenses issued during the previous quarter;

(b) information regarding License denials, suspensions or revocations;

(c) report of any events of non-compliance, breach or violations of this Ordinance, the Rules, the Compact, IGRA, License or any other law or regulation; provided, however, that these reports are not the subject of or relating to a pending investigation being conducted by the Commission, or hearing before the Commission;

(d) a report of Commission expenditures for the prior quarter;

(e) a summary of any Commission travel and training;

(g) all other information which the Commission deems relevant in order to keep the Council informed and current on all Gaming regulatory matters.

Nothing in this Section shall authorize or permit the Commission to provide the Council with any information pertaining to a pending investigation being conducted by the Commission or hearing before the Commission. All such information shall be kept confidential. Any willful or careless breach of this provision shall present due cause for removal of the person from office and a penalty of up to $5,000 (FIVE THOUSAND DOLLARS) for each offense. Claims of such disclosure shall be presented to the Commission within 60 days of the act complained of, or within 60 days the disclosure becomes known, whichever is later.

Section 2.13 **Budget.** The Commission shall establish a budget for its operations. It 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 funded as an operating expense of the Gaming Enterprise with one third of one percent (0.33%) of the Gross Gaming Revenue (win) but not more than $600,000 in any twelve (12) month period to be paid to the Commission. Any surplus remaining in the Commission's budget at the end of any budget year shall be refunded to the Gaming Enterprise. The Commission shall establish an internal budget which shall not exceed the cap earlier listed. If the Commissioner's budget needs exceed $600,000 for any year, the Commission shall seek or obtain additional funds from the Council.

Section 2.14 **Powers.** The Commission shall exercise all powers necessary to effectuate the purposes of this Ordinance and all other powers provided for in this Ordinance. The Commission shall have the power to promulgate Rules pursuant to this Ordinance, for the operation of games and the control of internal fiscal affairs of Gaming Operations and the conduct of all business properly brought before the Commission. 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. In accordance with this Ordinance, 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 to impose fines or sanctions for any cause deemed reasonable by the Commission upon any Licensee. The Commission shall conduct, or cause to be conducted, background investigations on all Applicants and Licensees. The Commission shall hold administrative licensing hearings under this Ordinance. The Commission shall have the power, upon duly recorded vote, to grant limited waivers of the Commission's sovereign immunity status, including the limited waiver of sovereign immunity contained in Section 7.03 of this Ordinance. Within the limits of its 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 2.15 **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. 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 2.16 **Promulgation of Auditing and Internal Control Rules.** The Commission may promulgate Rules governing the control of internal fiscal affairs of Gaming Operations as provided in Chapter 8 of this Ordinance.

CHAPTER III

EXECUTIVE DIRECTOR

Section 3.01 Qualifications of Executive Director. Salary

(1) The position of Executive Director of the Commission is hereby created. The Commission shall appoint the Executive Director, and the Executive Director shall serve at the will and pleasure of the Commission.

(2) No member of the Tribal Council, no person holding any elective office, nor any officer or official of any political party is eligible for the appointment of Executive Director.

(3) The Executive Director must have at least five (5) years of responsible administrative experience in public or business administration or possess broad management skills and have a MBA, J.D. or higher degree of education.

(4) The Executive Director shall devote his or her entire time and attention to the duties imposed under this Chapter and the business of the Commission and shall not pursue any other business or occupation or hold any other office of profit.

(5) The Executive Director shall not be pecuniarily interested in any businesses or company holding a license under this Chapter or doing business with any person licensed under this Chapter.

(6) The Executive Director is entitled to an annual salary in the amount specified by the Tribal Council.

Section 3.02 Authority of Executive Director.

(1) The Executive Director shall furnish to the Commission such administrative and clerical services and such furnishings, equipment, supplies, stationery, books and all other things that the Commission may deem necessary or desirable in carrying out its functions.

(2) The Executive Director shall employ division directors that possess at least two (2)(years of training and experience in the fields of accounting, investigation, law enforcement, law or gaming.

(3) The Executive Director in pursuit of the attainment of the objectives and the purposes of this Chapter may

(a) Direct and supervise all administrative actions of the Commission.

(b) Sue on behalf of the commission.

(c) Make, execute and effectuate any and all agreements or contracts, including contracts for the purchase of good and services as are necessary'

(d) Employ the services of such person as is considered necessary for the purposes of consultation or investigation and fix the salaries of or contract for the services of such legal, professional, technical and operational personnel and consultants.

(e) Perform such other duties which he or she may deem necessary to effectuate the purposes of this Chapter.

Section 3.03 **Files and Records to be Maintained by the Executive Director. Confidentiality of Information.**

(1) The Executive Director shall maintain a file of all applications for licenses under this Ordinance, together with a record of all actions taken with respect to those applications.

(2) The Commission and Executive Director may maintain such other files or records as they deem desirable.

(3) All information and data:

(a) Required by the Commission or the Executive Director to be furnished to them under this Ordinance or which may otherwise be obtained relative to the finances, earnings or revenue of any applicant or licensee;

(b) Pertaining to an applicant's criminal record, antecedents and background which have been furnished to or obtained by the Commission or the Executive Director from any source;

(c) Provided to the members of the Commission or the Executive Director of his employees by a governmental agency or an informer or on the assurances that the information will be held in confidence and treated as confidential; or

(d) Obtained by the Executive Director or the Commission from a supplier relating to the manufacturing of gaming devices or gaming goods;

are confidential and may be revealed in whole or in part only in the course of the necessary administration of this Ordinance or upon the lawful order of a court of competent jurisdiction.

Section 3.04 Removal of Executive Director from Office.

The Executive Director being hired by the Commission may be removed from office by the commission upon a majority vote of the Commission after a showing of cause.

CHAPTER IV

LICENSES, APPLICATIONS AND LICENSE PROCEDURES

Section 4.01 Gaming License Required. The Commission is hereby authorized to issue all Licenses for the conduct of all Gaming authorized under this Ordinance or any other License related to Gaming which the Commission may, by Rule require.

(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;

(4) Suppliers of Gaming Goods and Services. Any Person who is a Supplier of Gaming Goods and Services must comply with the same licensing requirements as if such Person were a Primary Management Official; however, if any Supplier is a non-natural person, such Supplier shall be subject to Management Entity licensing procedures; and

(4) any other employee or class of employees as determined by Commission Rules.

(b) Gaming Establishments. Each place, facility, or location where Gaming is conducted must obtain a separate facility License from the Commission.

Section 4.02 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 also according to requirements at least as stringent as those set forth in the Compact.

Section 4.03 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, the Rules, the Compact and IGRA;

(4) a separately sworn statement that the Applicant has never 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, misrepresentation or any other crimes of moral turpitude 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 5, and the Compact.

(b) No License shall be issued to any Applicant who is determined by 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 5 of this Ordinance regarding background investigations.

(d) The following notices shall be placed on the application form for a Key Employee, Management Entity, Primary Management Official or Supplier of Gaming Goods and Services before such form is completed by an Applicant:

(i) "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 North Carolina, 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.

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

(iii) "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)."

Section 4.04 Required Application Forms.

(a) Each individual applying for a License, whether as a Primary Management Official or Key Employee, and any person who is subject to a background investigation in connection with an entity application for a License, shall be required to complete the following forms:

(1) Application for Gaming License by Individual, if applicable;

(2) Personal History Record, with attached Personal Financial Questionnaire, including Statement of Assets and Statement of Liabilities;

(3) Two Complete Fingerprint Cards;

(4) Request to Release Information - Individual; and

(b) Each individual in subsection (a) of this Section applying for a License renewal shall supplement the Personal History Record and shall also be required to complete the following forms:

(1) Application for Gaming License by Individual, if applicable;

(2) Request to Release Information - Individual

(c) Each entity, including a Management Entity and Supplier of Gaming Goods and Services, applying for a License must complete the following forms:

(1) Application for Gaming License by Entity;

(2) Request to Release Information - Entity

(d) The Commission may request any additional forms or information from an Applicant as it deems necessary or appropriate.

(e) Pursuant to the Compact the Commission shall create an individual file for each applicant which includes the

Applicant's Personal History Record and all background information compiled by the Commission.

Section 4.05 **Fingerprint Cards Required.** All Applicants for a License are required to submit fingerprint cards. The Tribal Gaming Commission is hereby identified as the enforcement agency to take fingerprints. Pursuant to 25 C.F.R. §522.2(h), the Commission shall forward an Applicant's fingerprint cards to the NIGC to be processed by the Federal Bureau of Investigation National Criminal Information Center. The Commission may submit an Applicant's fingerprint card to any additional tribal, local or state criminal history check system or center as the Commission or the Executive Director deem necessary or appropriate. Reports obtained from such fingerprint processing shall be incorporated into the Applicant's personnel file.

Section 4.06 **Withdrawal of Application.** An Application may not be withdrawn without the permission of the Commission. An Applicant may request to withdraw an Application by submitting to the Commission a written request for withdrawal. The Commission retains the right, in its sole discretion, to grant or deny a request for withdrawal.

Section 4.07 **Continuing Duty to Provide Information.** Applicants and Licensees shall have a continuing duty to provide any materials, assistance or other information required by the Commission, and to fully cooperate in any investigation conducted by or on behalf of the Commission. If any information provided on the Application changes or becomes inaccurate in any way, the Applicant or Licensee shall promptly notify the Commission or Executive Director of such changes or inaccuracies.

Section 4.08 **Term of License; License Fees; Parameters of License.**

(a) Licenses, except Provisional Licenses (see §4.12 Provisional License), 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 $ 7,500 annually 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 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.

(c) Violations of any provision of this Ordinance or the Rules, or relevant License provision(s), by a Licensee 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. 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 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. A license issued hereunder is a privilege license and no right shall attach thereto.

Section 4.09 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, Management Entities and Suppliers of Gaming Goods and Services licensed by the Commission shall comply with such conditions of the License as the Commission, in its reasonable discretion, may require.

Section 4.10 Facility License. The Commission may issue an annual Facility License to a Gaming Establishment, if the Gaming Establishment:

(a) is a sound physical structure with adequate and safe plumbing, electrical, heating,cooling and ventilation systems in place and operational;

(b) has been inspected and approved for safety by a building and fire inspector designated by the Commission;

(c) is adequate in all respects to accommodate the Gaming intended to be carried on within the structure;

(d) is equipped with security and surveillance equipment meeting or exceeding provisions set forth in regulations established by the Commission;

(e) meets all requirements of applicable federal, tribal and state law; and

(f) has paid all applicable License fees and costs.

Section 4.11 Certification of Gaming Devices. All Gaming Devices purchased, leased or otherwise acquired by the Tribe must, pursuant to Section 6 of the Compact, meet the technical equipment standards set forth therein. The Commission shall maintain a complete list of all Gaming Devices (whether or not such devices are in use) located at any Gaming Establishment.

Section 4.12 Provisional License The Commission may issue Provisional Licenses pending the satisfactory completion of all background investigations and other requirements of this Ordinance, IGRA, or the Compact, and, if applicable, pending expiration of the thirty (30) day NIGC review period provided for at 25 C.F.R part 558. In no event shall a Provisional License be valid for greater than ninety (90) days, subject to the issuance of another Provisional license if such background investigations are not completed so long as no information to date has been received which would otherwise disqualify the applicant for a License.

Section 4.13 **Provisional Employment Pending Issuance of License and During Temporary License Period.** As provided in Section 4.12, 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 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;

(b) unsatisfactory completion of a background investigation or NIGC review resulting in nullification of a provisional License, as described in Section 5.10; 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 4.12; 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 4.14 **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 Commission approves of such assignment or transfer.

CHAPTER V

BACKGROUND INVESTIGATIONS AND LICENSE DECISIONS

Section 5.01 **Required Background Investigations.** Background investigations shall be conducted by the Commission, or other agent retained by the Commission, under the supervision and direction of the Commission, on all Persons specified in Section 4.01 of this Ordinance.

Section 5.02 **Standards for Background Investigations.** All background investigations shall be conducted 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, the Compact, and this Chapter 5. Background investigations shall be conducted in a manner which takes all reasonable steps to ensure the confidentiality of the information generated by the investigation as well as that submitted by the Applicants. Any willful or careless breach of this requirement may result in a penalty ranging from censure, suspension removal from office and a fine of up to a $5,000. The Commission shall have jurisdiction to hear and decide upon any such claims.

Section 5.03 **Information Required for Background Investigations.**

(a) Each Person subject to a background investigation under Section 5.01 of this Ordinance shall be required to provide, subject to the Privacy Act of 1974, at a minimum, and in such form as designated in Section 4.04, or as may be prescribed by the Commission or the Executive Director, 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 gaming, 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 misdemeanor traffic charges, but including any DWI, reckless or careless driving 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 deems relevant; and

(14) fingerprints consistent with the provisions of Section 4.05.

(b) Background investigations conducted by the Commission must be sufficient to make the determination described in Section 5.08(a). In conducting a background investigation, the Commission or its agents, shall make every reasonable effort to maintain the confidentiality of the identity of each Person interviewed in the course of the investigation. Willful or careless violations of this requirement are subject to penalty ranging from censure, suspension, removal from office and a fine of up to a $5,000.

Section 5.04 Completion of Investigation. Upon completion of the investigation, the Commission may either (i) grant a License to the Applicant, or (2) notice the Applicant for a hearing under Chapter 6 of this Ordinance. The Commission may notice the Applicant for a hearing at any time during the investigation.

Section 5.05 Issuance of License. The Commission after a hearing conducted under Chapter 6 of this Ordinance, may, subject to the requirements of Section 5.09, issue a License only after it has determined that the following minimum requirements have been met:

(a) the Applicant has fully completed all required Application forms and has provided the Commission with all other information that the Commission has requested;

(b) the Applicant meets all of the licensing requirements of this Ordinance;

(c) the Applicant meets all of the licensing requirements and criteria contained in the Compact;

(d) the Commission has reviewed the Applicant's criminal history record and deems the Applicant's criminal history to be satisfactory to hold a License; and

(e) all applicable License fees and costs have been paid.

Section 5.06 Denial of a License Application. The Commission, after a hearing conducted pursuant to Chapter 6 of this Ordinance, may deny an Applicant a License only after it has determined that the minimum requirements contained in Section 5.05 have not been met by the Applicant or the Applicant's Application, or if the Commission determines that the Applicant is 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.

Section 5.07 Cancellation or Suspension. Licensees and Applicants shall be legally responsible for any violation of this Ordinance, any relevant License provisions, the Rules, the Compact or IGRA. Any License issued hereunder may be canceled, limited, revoked, suspended, terminated or modified by the Commission, after a hearing as provided in Chapter 6, for the breach of any of the provisions of the License, this Ordinance, or 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, without a prior hearing, only 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 Chapter 6 of this Ordinance. No Gaming shall be conducted by the Licensee after cancellation, even during the pendency of an appeal.

Section 5.08 **Eligibility Determination and Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission.**

(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, the Gaming Operation shall not employ that Person.

(b) 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, and shall conduct all necessary background investigations. The Commission shall make the eligibility determination referred to in subsection (a) of this Section.

(c) A report 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. 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;

(4) the Commission's basis for those conclusions; and

(5) a copy of the eligibility determination made pursuant to Section 5.08(a).

(d) Subject to the provisions of §4.12 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.

(e) If a License is not issued to an Applicant, the Commission:

(1) shall notify the NIGC; and

(2) 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.

(f) With respect to Key Employees and Primary Management Officials, applications for employment and reports of background investigations shall be retained by the Commission 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 5.09 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 objections itemized by the

NIGC. The Commission shall make the final decision whether to issue a License to such Applicant.

Section 5.10 **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.

Section 5.11 **Show Cause Hearing for Manager and Primary Management Officials.**

Excepting the provisions of §5.10 and notwithstanding the foregoing, in the event that the Tribal Gaming Commission obtains reliable information that the duly licensed Manager and/ or a Primary management Official may have breached any provision of this Ordinance, the Compact, IGRA, or its license, the Tribal Gaming Commission shall issue a Notice for Show Cause to the licensee prior to any action of suspension or the giving of notice of a revocation hearing with respect to its / their license(s). The Notice for Show Cause shall describe the alleged breach, shall describe the steps necessary to effect a cure and shall provide the licensee with an opportunity to meet with the Tribal Gaming Commission to discuss the matter. The discontinuance or correction of the alleged breach shall constitute a cure thereof, except where such alleged breach constitutes a criminal violation by the Manger or the Primary Management Official. If the alleged breach is not corrected or discontinued as required herein, then the Tribal Gaming Commission shall institute the notice and hearing procedure set forth above.

CHAPTER VI

RULES OF PROCEDURE FOR HEARINGS

Section 6.01 Scope of Rules of Procedure. All License hearings, enforcement hearings and exclusion hearings conducted pursuant to this Ordinance shall be governed by this Chapter.

Section 6.02 Hearings.

(a) The Commission shall afford an Applicant an opportunity for a hearing prior to any final action by the Commission on a Application, other than an unconditional grant of a License.

(b) The Commission shall afford a Licensee the opportunity for a hearing prior to taking final action resulting in the revocation of the License or the imposition of any penalties which the Commission is authorized to impose pursuant to these Rules and the Ordinance.

(c) Nothing in this Section shall limit the Commission's authority to summarily suspend or revoke a License without a hearing pursuant to Section 5.07(b) of this Ordinance.

Section 6.03 Notice of Hearing.

(a) The Commission shall provide written notice to the Applicant or Licensee of the hearing at least seven (7) days prior to the date set for the hearing. The day the Applicant or Licensee receives the notice shall be considered a full day's notice under this Section. The notice shall be sent by registered or certified mail, or may be personally served upon the Applicant or Licensee. The notice shall state the date, time and place of the hearing. The notice shall also contain an indication of the action(s) being considered by the Commission, including, but not limited to:

(1) whether the Commission is holding the hearing for the purpose of obtaining further information from the Applicant;

(2) whether the Commission will be considering the grant or denial of the License Application;

(3) whether the Commission will be examining any alleged violations of the Ordinance, the Compact, the IGRA, the conditions of any License issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements; or

(4) whether any other sanctions or penalties will be considered.

The notice shall also contain a short, plain statement of the reasons the Commission determines the hearing is necessary.

Section 6.04 **Ex Parte Communications.**

(a) No ex parte communication relative to the action(s) being considered by the Commission, or a threat or offer of reward shall be made, before a decision is rendered, to any member of the Commission by or on behalf of the Applicant or Licensee, or any legal representative or counsel of the Applicant or Licensee.

(b) Nothing in this Section shall prohibit the Applicant, Licensee or its authorized agent from communicating with the Commission's legal counsel, its investigators or other authorized agents.

(c) Any member of the Commission who receives an ex parte communication shall immediately report such communication to the Commission's legal counsel.

(d) For purposes of this Section only, the action(s) being considered by the Commission shall be those matters identified in the written notice as provided in Section 6.03(a) of this Ordinance, as well as any other matters that are actually considered by the Commission during a hearing. All matters identified in the written notice shall be subject to the prohibition against ex parte communications. All matters not identified in the written notice that are considered by the Commission during a hearing become subject to the prohibition against ex parte communications as soon as they are discussed during the hearing.

(e) The Commission shall have the power to impose any sanction pursuant to this Chapter upon its determination that an Applicant or Licensee has made an ex parte communication in violation of this Section.

Section 6.05 **Appearance through Counsel.**

(a) Parties to all hearings governed by this Chapter may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the Commission.

(b) When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.

(c) When a party is represented by an attorney, the attorney shall sign all motions, notices, requests, and other papers on behalf of the party, including a request for subpoenas.

(d) Upon the establishment of a Eastern Band of Cherokee Indians Bar, any attorney appearing before the Commission must be duly admitted and licensed by the Eastern Band of Cherokee Indians Bar to practice law on the Tribe's Reservation or before this Commission. Until such Bar is established any attorney appearing before the Commission must be duly admitted and licensed by the State of North Carolina Bar to practice law.

Section 6.06 **Discovery Procedures for Enforcement Hearings.**

(a) The Commission's legal counsel and the Licensee shall exchange a list of persons that each party intends to call as witnesses no later than five (5) business days before a scheduled enforcement hearing. The day the list is received shall be considered a full day's notice under this Section. Each witness shall be identified by name, if known, position, and business address. If no business address is available, a home address for the witness shall be provided. Any witness not identified in accordance with this Section may be prohibited from testifying at a hearing in the Commission's discretion.

(b) The Commission's legal counsel and the Licensee shall exchange a copy of all documents or tangible things that they intend to offer as evidence in support of the party's case in chief. This exchange shall be made to the opposing party no later than five (5) business days before a scheduled enforcement hearing. The day the documents are received shall be considered a full day's notice under this Section. Failure to make available any document or tangible thing in accordance with this section may, in the Commission's discretion, be grounds to deny the admission into evidence of such document or tangible thing.

Section 6.07 Confidential Materials.

(a) Prior to making any documents available to the Commission's legal counsel or designated agent, the Applicant or Licensee may designate any document it believes to contain confidential information as "Subject to a Confidentiality Claim" by so marking the document prior to providing a copy of the document to the Commission's legal counsel.

(b) Documents provided to the Commission's legal counsel or designated agent which have been marked in accordance with Paragraph (a) above, and any non-public information contained within the document, shall not be made a part of the public record of the Commission proceedings otherwise disclosed by the Commission to any person (except as may be required under any applicable law, rule, regulation, court or administrative order, or the Compact), without first providing the applicant or licensee with the opportunity to seek a ruling by the Commission that the document or non-public information contained therein should not be made public. The request for such a ruling and any discussions relating to the document shall be heard and ruled upon by the Commission in an Executive Session meeting. If the request for such a ruling is made during a public hearing session, the hearing session shall be adjourned and the Commission shall conduct an Executive Session meeting in order to hear and rule upon the applicant's or respondent's request. The Applicant or Licensee may present to the Commission in Executive Session written and oral argument regarding the confidentiality claim, along with any facts the Applicant or Licensee believes to be relevant to such argument.

(c) In determining whether a document marked in accordance with subsection (a) above should be made part of the public record of the Commission proceedings on the Application, the Commission will balance the Applicant's claimed confidentiality concerns against the materiality of the information to the Application, the public's right to be made aware of the information, and the Commission's need to make the information part of the public record in order to remain fully accountable for the licensing decision. In making this determination, the Commission shall consider all facts and circumstances relevant to making a proper ruling.

(d) In the event that the Commission rules during executive session that the document in question and/or information contained therein should be made part of the public record of the Commission's proceedings on the Application, the document and/or information contained therein will be made part of the public record unless the Applicant withdraws the

document from the Commission's possession. In the event the Applicant chooses to withdraw the document from the Commission's possession, the Commission will then weigh the withdrawal along with the other evidence in making its determination on the Application. Withdrawal of documents from the application process shall be looked upon by the Commission with disfavor, and, depending on the facts and circumstances, the Commission may deem the withdrawal of any document to be sufficient cause in and of itself for denial of the License.

(e) In the event that the Commission rules during Executive Session that the document and/or information contained therein should not be made part of the public record, the document shall be designated "Confidential" and will not be made part of the public record. The Commission may consider the document and information contained therein in camera in making its determination on the Application.

(f) At the conclusion of the Commission proceedings on the License application, the Commission will return to the Applicant all documents marked as "Subject to a Confidentiality Claim" pursuant to Paragraph (c) above that were not (i) made part of the public record of the gaming License application or (ii) designated as "Confidential" and considered by the Commission in camera.

Section 6.08 **Subpoenas.**

(a) The Commission has the power and discretion to issue subpoenas and to impose such reasonable penalties for noncompliance.

(b) Subpoenas may be issued to compel any person to appear at the hearing on the merits of the case, to give oral testimony, or to produce documents or other tangible things.

Section 6.09 **Hearing Procedures.**

(a) The Chair of the Commission shall preside over all hearings, and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings.

(b) The Commission may require any person, including, but not limited to, any Applicant or Licensee, or any agent, employee or representative of any Applicant or Licensee, to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters which the Commission deems relevant to the discharge of the

Commission's official duties. Testimony shall be recorded by a duly certified court reporter and may be used by the Commission as evidence in any proceeding or matter before the Commission. Failure to appear and testify fully at the time and place designated shall result in sanctions. Failure to appear may constitute grounds for:

(1) the refusal to grant a License to the person summoned, and /or that person's principal, or employer;

(2) the revocation or suspension of a License held by the person summoned, and/or that person's principal, or employer; or

(3) the inference that the testimony of the person summoned would have been adverse to that person and/or that person's principal or employer.

(c) Any party to the hearing may call and examine witnesses. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is argumentative or repetitive.

(d) The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.

(e) Persons shall be permitted to speak only when recognized by the Chair.

(f) Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.

(g) Any party to the hearing may conduct cross-examinations reasonably required for a full and true disclosure of the facts.

(h) All hearings held under this Ordinance shall be open to the public.

(i) The Commission, in its discretion, has the power to sequester witnesses.

Section 6.10 Evidence

(a) In hearings governed by this Chapter, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such

privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(b) All evidence, including records and documents in the possession of the Commission or which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.

(c) The Commission may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.

(d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.

(e) The record in a hearing governed by these Rules shall include:

(1) All Applications, intermediate rulings and exhibits and appendices thereto.

(2) Evidence received or considered, stipulations and admissions, including but not limited to confidential evidence received pursuant to Section 6.07 of this Ordinance.

(3) A statement of matters officially noticed.

(4) Questions and offers of proof, objections, and rulings thereon.

(5) Any decision, opinion, findings or report by the Commission.

(6) The transcript prepared by a duly certified court reporter.

Section 6.11 Determinations by the Commission.

(a) The Commission shall make all determinations of issues before it by a majority vote of the Commission.

(b) All determinations made by the Commission involving the grant, denial, cancellation or revocation of a License, a finding of a violation of this Ordinance, the Rules, the Compact, IGRA, the conditions of any License issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements, and the imposition of any sanctions or penalties shall be made by motion and on the record.

(c) A copy of any resolution reached pursuant to Section 6.11(b) of this Ordinance shall be served upon the Applicant or Licensee by registered or certified mail, or may be served personally.

Section 6.12 Sanctions. If any party or its attorney fails to comply with any provision of this Ordinance, the Rules, the Compact, IGRA, the conditions of any license issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements, including, but not limited to any agreement, regarding any matter, including, but not limited to, discovery matters and the failure to appear at a hearing at the scheduled time, the Commission upon motion or upon its own initiative, may in its discretion impose upon such party or attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including, but not limited to, the following:

(a) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to these Rules or any order of the Commission;

(b) An order that designated facts shall be taken to be established;

(c) An order that the disobedient party may not support or oppose designated claims or defenses;

(d) An order striking any pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the disobedient party;

(e) A finding against the disobedient party; or

(f) Any sanction otherwise set forth in this Ordinance.

CHAPTER VII

APPEALS

Section 7.01 Right of Appeal; Appeals Procedures. A Person directly affected by any finding of the Commission pursuant to Section 6.11 of this Ordinance, or any licensing decision of the Commission under this Ordinance, shall have the right to appeal such finding by filing for a rehearing before the Commission. Any such appeal must be filed with the Commission 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 within thirty (30) days of the date of the filing of the appeal. In any case which come before the Commission for final action, the Commission may determine to review all findings of fact and of law, or proceed pursuant to a *de novo* standard. The Commission's decision on rehearing shall be final, and no further appeal may be had.

Section 7.02 Sovereign Immunity of the Commission. The Eastern Band of Cherokee Indians, acting through the Tribal Council, confers on the Commission all of the Tribe's rights, privileges, immunities and sovereign immunity from suit, to the same extent that the Tribe would have such rights, privileges, if it engaged in the activities undertaken by the Commission.

Section 7.03 Limited Waiver of Sovereign Immunity of the Commission. The Commission hereby expressly waives its sovereign immunity from suit: in any suit against the Commission wherein relief is limited to injunctive or declaratory relief against the Commission. Jurisdiction for suit against the Commission for review of Commission rulings or decisions by the Tribe's Class III gaming Manager shall be as set forth in section 16.1 of the Class III Gaming Management Agreement with the Tribe as approved by the NIGC.

CHAPTER VIII

AUDITING
AND INTERNAL CONTROL

Section 8.01 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 require the consistent application of Generally Accepted Accounting Principles, and 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 North Carolina;

(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 8.02 Oversight of Internal Fiscal Affairs. The Commission shall require independent audits of the financial statements of all Gaming Operations. Such independent audits must apply and require the consistent application of Generally Accepted Accounting Principles, and shall:

(a) be conducted by independent accountants, knowledgeable in casino audits and operations and licensed or certified to practice public accounting in the State of North Carolina;

(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 North Carolina State Council 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; and

(e) provide such other information as the Commission deems necessary or appropriate.

Section 8.03 Conduct of Audit.

(a) The Commission 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, and any other information the Commission deems necessary or

appropriate shall be specifically included within the scope of the audit described in Section 8.03(a).

Section 8.04 **Prohibition Against Embezzlement.** Any delay or action of any kind which, in the opinion of the Commission, 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 may sanction the Licensee, report the matter to appropriate law enforcement and gaming regulatory agencies for further action and take such other action as it deems necessary or appropriate. Sanctions may include the imposition of fines, and/or the revocation, suspension, or limitation of, or refusal to renew, any License.

Section 8.05 **Non-Compliance.** Failure to comply with any of the requirements of this Chapter, or the Rules promulgated hereunder may be found to constitute a violation of this Ordinance.

CHAPTER IX

EXCLUSION OR REJECTION OF INDIVIDUALS

Section 9.01 Prohibition Against Certain Individuals. It shall be a violation of this Ordinance for any Licensee to knowingly fail to exclude or eject from the gaming area of 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 person known to have committed a gaming related felony;

(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 9.02 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 Chapter 6 and shall have the rights provided to an "Applicant" therein. The Manager of any Gaming Operation shall also have the authority to exclude or remove any person from the Gaming Establishment, and all such actions shall be reported to the Commission within 24 hours of the taking of such action.

CHAPTER X

PROHIBITED ACTS

Section 10.01 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 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 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 under this Ordinance and the Compact;

(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 Commission or the Executive Director 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, Tribal and Federal law or IGRA;

(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, Tribal and Federal law or IGRA;

(o) falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to a Gaming Operation in ways other than is provided in approved internal control procedures;

(p) taking any action which interferes with or prevents the Commission or the Council from fulfilling its duties and responsibilities under this Ordinance, the Rules, or IGRA; 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 10.02 Prohibition Against Electronic Aids. Except as specifically permitted by 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 XI

NATIONAL INDIAN GAMING COMMISSION AND COMPACT

Section 11.01 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 11.02 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 Gaming Operation revenues as an operating expense.

Section 11.03 Compact with the State of North Carolina. 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 XII

GENERAL REQUIREMENTS

Section 12.01 Security and Surveillance. Each Gaming Establishment must provide for full security and surveillance 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 shall interact when necessary to carry out their official duties and to coordinate their activities in order to effectuate the best protection for the gaming patrons and the Tribal and management interests and assets of the enterprise.

Section 12.02 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 12.03 Amendments. All provisions of this Ordinance are subject to amendment by the Council. 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 Council.

Section 12.04 Severability. If any provision 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 12.05 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 12.06 **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 12.07 **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 Tribal Casino Gaming Enterprise and shall be transferred to the account or place designated by the Enterprise.

(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 12.08 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 Tribal Casino Gaming Enterprise.

Section 12.08 **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 12.09 **Patron Rights Regarding Disputes.** When a Person brings a dispute for resolution pursuant to Section 12.10, 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 12.10.

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 12.10 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 12.11 Agent for Service of Process. The Commission Chairman shall be designated agent for service of process for the Tribal Gaming Commission of the Eastern Band of Cherokee Indians. The Chairman shall promptly report any such service to the Commission, and shall promptly provide the Commission with a copy of any complaints or other documents served.

Section 12.12 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 12.13. Comity and Concurrent Jurisdiction. The Commission is empowered to seek comity and enforcement of the orders of the Commission by the courts of any other jurisdiction whose assistance may be required to give effect to the orders of the Commission. The Commission is also empowered to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts of foreign jurisdictions.

Section 12.14. Other Powers of Commission. In addition to and in conjunction with the powers and responsibilities listed in this Ordinance, Rules and other applicable laws and regulations the Commission shall have power to:

(a) issue orders of temporary closure of gaming activities for violations of this gaming ordinance or of contractual obligations

to the Tribe, the IGRA or the approved class III compact or orders of permanent closure of gaming activities for violations of this gaming ordinance, tribal gaming regulations or contractual obligations to the Tribe;

(b) initiate civil and criminal actions in court to enforce provision of this ordinance, tribal gaming regulations or the IGRA;

(c) negotiate and approve management agreements for class II gaming to be submitted to the Tribal Council for approval by Tribal Council resolution;

(d) approve, deny or revoke gaming licenses for class II or class III gaming;

(e) monitor all gaming activities conducted on Eastern Cherokee lands on a continuing basis;

(f) insure that background investigations are conducted as required by this ordinance and the IGRA as well as conduct such additional investigations as the Commission may deem necessary;

(g) demand access to and inspect, examine, copy and audit all papers, books and records concerning activities and revenues of any gaming activity conducted on Eastern Cherokee lands and any other matters necessary to carry out their duties under this ordinance;

(h) conduct such hearings as the Commission may deem appropriate in carrying out its duties, including administering oaths or affirmations to witnesses and issuing subpoenas to compel witnesses to appear at such hearings;

(i) when information is received through audits or other investigations that indicates a violation of tribal, federal or applicable state ordinances, laws or regulations, to treat as confidential and provide such information to the appropriate law enforcement officials;

(j) adopt regulations deemed necessary to clarify or enforce provision of this ordinance or tribal rights and interests established in approved management agreements or an approved class III compact; and

(k) adopt an Eastern Band of Cherokee Indians class II and class III gaming license application.

Section 12.15. Enforcement Provisions.

(a) All matters and occurrences which indicate that a criminal act under the Tribe Code, Federal Law or State Law may have occurred in or around any gaming establishment shall be immediately reported to the appropriate law enforcement agency and the Commission.

(b) All matters and occurrences contrary to this Ordinance, rules or regulations promulgated by the Commission which are not covered under a Criminal Code shall be deemed to be a Civil violation. The Commission is hereby authorized to establish a civil violations list of penalties and fines which shall be imposed by the Commission for all such civil violations with the violator afforded the rights to a hearing as provided in Chapter 6 herein.

NOW THEREFORE, BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in Annual Council assembled, with a quorum present, that the foregoing Eastern Cherokee Gaming Ordinance is hereby enacted into tribal law in ordinance form, with the ordinance to be henceforth incorporated into the Cherokee Code as set forth above immediately upon ratification by the Principal Chief and by the National Indian Gaming Commission.

Submitted by: Tribal Gaming Commission

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