

## NATIONAL INDIAN GAMING COMMISSION

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### SETTLEMENT AGREEMENT

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SA-23-01

This Settlement Agreement (Agreement) is entered into by and between the Alturas Indian Rancheria (Tribe) which operates the Desert Rose Casino (DRC) in Alturas, California, through its duly authorized representative and the Chairman of the National Indian Gaming Commission (NIGC) to resolve the issues related to the Notice of Violation (NOV-22-02) and Proposed Civil Fine Assessment (CFA-22-02) issued to the Tribe.

#### RECITALS

1. Pursuant to the Indian Gaming Regulatory Act (IGRA) and NIGC regulations, the NIGC Chair may issue a notice of violation for violations of any provision of IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the NIGC Chair. 25 U.S.C. § 2713(a)(3); 25 C.F.R. § 573.3(a).
2. Pursuant to IGRA and NIGC regulations, the NIGC Chair may issue civil fines not to exceed \$57,527 per violation against a tribe, management contractor, or individual operating Indian gaming for violations of IGRA, NIGC regulations, or any tribal ordinance or resolution approved by the NIGC Chair. 25 U.S.C. §§ 2705(a)(2) and 2713(a)(1); 25 C.F.R. § 575.4. If the violation continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 575.4(a)(2).
3. Pursuant to NIGC regulations, each tribe shall submit a copy of the Audited Financial Statements (AFS) and Agreed Upon Procedures reports (AUP) within 120 days of the end of a gaming operation's fiscal year. 25 C.F.R. § 571.13(a); Gaming Ordinance § 8.2.2.
4. Also pursuant to NIGC regulations, each gaming operation shall file with the Commission quarterly fee payments and statements within three, six, nine, and twelve months of the end of the gaming operation's fiscal year. 25 C.F.R. § 514.5(b). Statements or fee payments over 90 calendar days late constitute a failure to pay the annual fee. 25 C.F.R. § 514.10.
5. On October 7, 2022, the Chairman issued NOV-22-02 to the Tribe for failure to timely submit AFS and AUP, and for failure to pay annual fees.

6. On December 7, 2022, the Chairman issued CFA-22-02 to the Tribe, wherein the Chairman assessed a fine against the Tribe in the amount of \$100,000.
7. The Chairman and the Tribe desire to resolve issues related to the Notice of Violation (NOV-22-02) and Proposed Civil Fine Assessment (CFA-22-02).
8. The Chairman and the Tribe have agreed to execute this Agreement and perform in accordance with the following terms:

### **STIPULATIONS**

9. The Tribe agrees that the NIGC has jurisdiction over this matter.
10. The Tribe admits that it was required to timely submit the FY 2020 AUP, FY 2020 AFS, and FY 2021 AFS for DRC.
11. The Tribe admits that DRC was required to pay annual fees due December 31, 2021, March 31, 2022, and June 30, 2022.
12. The Tribe admits that it failed to timely submit FY 2020 AUP, FY 2020 AFS, and FY 2021 AFS for DRC.
13. The Tribe admits that DRC failed to pay the annual fees due December 31, 2021, March 31, 2022, and June 30, 2022.
14. The Tribe is aware of its right to:
  - a. Appeal CFA-22-02 to the full Commission under 25 C.F.R. part 585;
  - b. Obtain a hearing to contest the matter under 25 C.F.R. part 584; and
  - c. Appeal any final determination by the full Commission to a federal district court under 25 U.S.C. § 2714.
15. The Tribe stipulates that this Agreement shall be deemed a final order of the Commission, and a final agency action pursuant to 25 C.F.R. § 573.5(b).

### **TERMS OF SETTLEMENT**

16. This Agreement shall become effective upon the date it is signed by the last party to sign this Agreement.
17. For a period of two years following the execution of this Agreement, the Tribe agrees to engage an audit firm to prepare AFS and AUP for DRC no later than 90 calendar days before DRC's fiscal year end. The engagement letter will provide that the completed AFS and AUP are due to the Tribe no later than 15 calendar days before the AFS and AUP are

due to the NIGC. The engagement letter will reference the specific date on which the Tribe's AFS and AUP are due to the NIGC pursuant to IGRA and NIGC regulations.

18. For a period of two years beginning with the execution of this Agreement, the Tribe agrees to provide the NIGC Sacramento Region Director with a copy of the executed engagement letter with the audit firm that will prepare the AUP and AFS. The copy of the executed engagement letter may be transmitted by e-mail and is due to the NIGC Sacramento Region Director no later than 60 calendar days before DRC's fiscal year end.
19. For a period of two years beginning with the execution of this Agreement, the Tribe shall submit the AFS and AUP within 120 days of the end of its fiscal year.
20. For a period of two years beginning with the execution of this Agreement, the Tribe shall submit quarterly fee statements and payments for DRC within three, six, nine, and twelve months of the end of the gaming operation's fiscal year.
21. Of the \$100,000 civil fine assessed against the Tribe in CFA-22-02, the Tribe agrees to pay, and the Chairman agrees to accept, the amount of \$5,000 payable to the U.S. Treasury and delivered to the NIGC at 1849 C Street, N.W., Mail Stop #1621, Washington, D.C. 20240. The Tribe must pay the \$5,000 within 10 days of execution of this Agreement.
22. Of the \$100,000 civil fine assessed against the Tribe in CFA-22-02, the Chairman agrees to suspend \$95,000 pending the Tribe's adherence to the terms of this Agreement. The Chairman agrees that if the Tribe fully complies with the terms of this Agreement, the \$95,000 will be waived. The Tribe agrees that if any term of this Agreement is not met, the \$95,000 will become due, and payment must be made within 30 days of the Tribe receiving written notice from the Chairman. Civil fines are payable to the U.S. Treasury and must be delivered to the NIGC at 1849 C Street, N.W., Mail Stop #1621, Washington, D.C. 20240.
23. The Chairman agrees upon execution of this Agreement to waive the right to impose any further civil fine against the Tribe relating to the violations described in NOV-22-02.
24. The Tribe waives all rights to further pursue an appeal of CFA-22-02 before the Commission, waives all rights to pursue an appeal to a presiding official, and waives all rights to judicial review of such proceedings.
25. In exchange for the terms, conditions, and understandings set forth in this Agreement, the Tribe waives its right to any administrative review of this settlement, under 25 C.F.R. §§ 584 and 585, to seek reduction or waiver of a civil fine, under 25 C.F.R. § 575.6, and the right to seek judicial review, under 25 U.S.C. § 2714.
26. The Tribe agrees and acknowledges that this Agreement does not restrict the NIGC Chair from issuing new notices of violations and other enforcement actions for new violations of IGRA, NIGC regulations, and/or the Tribe's gaming ordinance.

**TERM OF THE AGREEMENT**

27. This Agreement shall terminate upon the fulfillment of all terms listed under the Terms of Settlement.

**ADDITIONAL COVENANTS**

28. This Agreement constitutes the entire agreement between the Chairman and the Tribe relating to NOV-22-02 and CFA-22-02, and supersedes all prior verbal or written agreements and understandings between the parties related to the subject matter. No warranties, representations, covenants, or agreements shall be binding upon any party except as set forth herein. Any modification or waiver of any term of this Agreement, including the modification or waiver of term, must be in writing and signed by the parties.
29. The Tribe agrees that this Agreement shall be deemed a final order of the Commission and a final agency action, under 25 C.F.R. § 573.5(b).
30. The Chairman and the Tribe expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein and set above shall be binding upon the parties, their agents, heirs, personal representatives, successors and assigns.
31. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purpose of the Agreement.

For the Alturas Indian Rancheria:

By:  Date: 1/5/23  
Phillip Del Rosa  
Chairman

For the National Indian Gaming Commission:

By:  Date: 1/6/23  
E. Sequoyah Simermeier  
Chairman