

JUL 10 1992

Honorable Sandra Keo
Chairperson, Sac and Fox Nation
of Missouri in Kansas and Nebraska
Route 1, Box 60
Reserve, Kansas 66434

Dear Ms. Keo:

The Bureau of Indian Affairs (BIA) received the Tribal-State Compact for Class III Gaming Between the Sac & Fox Nation of Missouri in Kansas and Nebraska and the State of Kansas on May 28, 1992. We are unable to approve the compact at this time.

A question has been raised by the Attorney General of the State of Kansas as to the Governor's authority to enter into a tribal-state compact without specific authorization from the State legislature. The question was raised when the Governor entered into a compact with the Kickapoo Tribe.

On July 10, 1992, the Kansas Supreme Court ruled that in the absence of an appropriate delegation of power by the Kansas Legislature or legislative approval of the compact, the Governor had no power to bind the State to the terms of the compact. The same question of authority is presented in the Sac and Fox Compact, and as such, we cannot approve the compact in light of this decision.

Nonetheless, in anticipation that the Kansas Supreme Court might affirm the Governor's authority to bind the State to the terms of the Kickapoo compact, and to expedite the review, we undertook a substantive review of the Sac & Fox Compact. We concluded that the compact, taken as a whole, violated the Indian Gaming Regulatory Act (IGRA), and the Department of the Interior's trust obligations to the Tribe.

In the event the Tribe is intending to pursue further action with appropriate state officials to ratify the compact, we offer our analysis of the compact provisions which require its disapproval.

The IGRA authorizes tribes to use gaming revenues for a limited number of uses. The IGRA provides in part that net revenues from any tribal gaming are not to be used for purposes other than:

- (i) to fund tribal government operations or programs;
 - (ii) to provide the general welfare of the Indian tribe and its members;
 - (iii) to promote tribal economic development;
 - (iv) to donate to charitable organizations; or
 - (v) to help fund operations of local government agencies...
- [25 U.S.C. Section 2710(b)(2)(B)].

The IGRA also authorizes compact provisions relating to "the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity." 25 U.S.C. Section 2710(d)(3)(C)(iii). The Act otherwise specifically prohibits further state assessments by providing that:

Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person entity authorized by an Indian tribe to engage in a Class III activity. [25 U.S.C. Section 2710(b)(2)(B)].

These provisions of the IGRA impose very specific limitations on the use of gaming revenues. We therefore reviewed the funding sections of the compact for conformity with these limitations.

First, Sections 17, 20, and 21 of the compact purport to make multiple assessments which, taken as a whole, may unlawfully diminish the revenues the Tribe is entitled to under the IGRA. The sweeping assessments require the Tribe (regardless of ownership of the property) to pay permit and license fees, real and personal property taxes, occupational taxes, sales and use taxes, alcoholic beverage, hotel occupancy, tobacco, utility and income taxes (i.e. all taxes any non-Indian business would pay in the city and state), and, in addition, (under

Sections 21(a) and (b)) to pay a total of a 12.5% tax to "fund the operations of the local government". We have no way to determine the factual justification for the 12.5% distribution since it is derived from "the amounts distributed each month to the Sac & Fox Nation pursuant to the Management Contract after monthly payments for debt service and expenses related to enforcement of this Compact and the Nation's Ordinance and regulations." Section 21 (a) and (b).

The Management Contract has not been approved by the BIA and thus has no legal affect. Additionally, although referenced in the compact, the contract was not provided for review and as such there is an incomplete record on which to

review the compact.

The compact appears to require that the Tribe be responsible for funding local governmental operations through the multiple assessments of Section 17 and 20 (without Section 21). We find no rational basis for the assessments and insufficient information was supplied to justify the assessments. The cumulative effect of these assessments appear to diminish the Tribe's share of revenues it is entitled to under the IGRA. Therefore, we consider these compact provisions not to be in the best interest of the Tribe and may not be lawful. Without substantially more clarification and justification than was provided in the Tribe's letter of May 7, 1992, or major changes to the compact, we conclude that our trust obligations to the Tribe foreclose approval of the compact.

Second, Sections 21(a) and (b) of the Compact appear to impose an assessment by the State and its political subdivision (the city), contrary to the IGRA. The imposition of fees which are not related to the regulation of gaming are not permitted under 25 U.S.C. Section 2710(d)(4).

Furthermore, although subsection (b) purports to fund local governmental agencies, it requires a payment to the State for services which are provided by the State. These services do not appear to have any relationship to the cost of regulating, which is the only permissible state assessment of gaming revenues, nor is there any adequate explanation which establishes these state assessments as directly funding the local governmental operations. Consequently, we conclude that Section 21(b) violates 25 U.S.C. § 2710(d)(4).

Finally, Section 21(d), which purports to withhold a later concurrence by the Governor on the use of trust acquisitions in the Kansas City area, is contrary to Federal law and is beyond the authority of the Governor. Before off-reservation trust land can be used for gaming, Section 20 of the IGRA requires the concurrence of the Governor in the Secretary's determination that the use of the trust land is in the best interest of the Indian tribe and not detrimental to the surrounding community. Section 21(d) of the compact, however, requires any subsequent Governor to "refuse to concur" in the Secretary's determination on any other gaming trust acquisition for as long as 30 years. Any provision in the compact which would preclude the Governor from exercising the authority conferred by Federal law to concur in the use of trust land for gaming is contrary to the letter and spirit of the IGRA. Consequently, we conclude that Section 21(d) violates the IGRA.

In addition to the above-listed issues resulting in disapproval of this compact, the compact raises a number of other issues which concern us. Primarily, we believe that many of the provisions in the compact are inappropriately included. For example, agreements relating to land which has not yet been acquired are more appropriately included in the trust acquisition application. Contract provisions,

such as the tribal waiver of sovereign immunity, should be included in the management contract, rather than the compact.

Furthermore, the compact includes several references to the sale of liquor. The possession or sale of liquor in Indian Country is a violation of Federal criminal laws (18 U.S.C. Section 1154) unless it is done in accordance with an ordinance certified by the Secretary and published in the FEDERAL REGISTER (18 U.S.C. Section 1161). The Sac and Fox Tribe does not have a certified liquor ordinance. Secretarial certification of such an ordinance must be obtained and published prior to the selling of liquor in Indian Country. The BIA can provide the necessary assistance on the ordinance.

The BIA would be pleased to offer such technical assistance as the Tribe may desire to bring this compact into conformity with Federal Indian law. If you have any questions, please contact our Gaming Action Team at (202) 219-4068.

Sincerely,

(SGD) WILLIAM D. BETTENBERG

Acting Assistant Secretary - Indian Affairs

**TRIBAL - STATE COMPACT
FOR CLASS III GAMING**

Between the

**SAC & FOX NATION
OF MISSOURI
IN KANSAS AND NEBRASKA**

And the

STATE OF KANSAS

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**TRIBAL-STATE COMPACT
FOR CLASS III GAMING**

Between the

**SAC & FOX NATION OF MISSOURI
IN KANSAS AND NEBRASKA**

and the

STATE OF KANSAS

THIS TRIBAL-STATE COMPACT made and entered into by and between the Sac & Fox Nation of Missouri in Kansas and Nebraska, a federally-recognized Indian Tribe (the "Nation") and the State of Kansas (the "State"), pursuant to the provisions of the Indian Gaming Regulatory Act, Pub.L. 100-497, 25 U.S.C. §§ 2701 et seq. (the "Act"),

RECITALS

WHEREAS, the Nation and the State are separate sovereigns, and each recognizes and respects the laws and authority of the other sovereign; and

WHEREAS, the Congress of the United States has enacted into law the Act, Pub.L. 100-497, 25 U.S.C. § 2701 et seq. which provides in part that a tribal-state Compact may be negotiated between a Tribe and a State to govern the conduct of certain Class III gaming activities on the Indian lands of the Nation within the State; and

WHEREAS, the Nation will apply to have land located in Kansas City, Kansas (the "City"), which is not contiguous to its reservation to be put into trust status by the United States for the benefit of the Nation and proposes to conduct thereon both Class II gaming and Class III gaming, the latter pursuant to the provisions of this Compact; and

WHEREAS, under the provisions of the Act (25 U.S.C. § 2719(b)(1)(A)) the concurrence of the Governor of the State is required should the United States Secretary of Interior make the determination that a gaming establishment on newly acquired lands would

be in the best interest of the Nation and its members, and would not be detrimental to the surrounding community, and the United States Secretary of Interior, in reaching that determination, is required to consult with appropriate local officials, including officials of other nearby Indian tribes; and

WHEREAS, the Governor of the State and the Nation have determined that the City and charitable organizations for the benefit of the Native American community in the State can and should benefit from the revenues generated by gaming on non-contiguous land put into trust status for the Nation; and

WHEREAS, pursuant to the mandate of the Act (25 U.S.C. § 2710(2)(B)), the Nation's Ordinance regulating Class II and Class III gaming provides that a portion of the Nation's net revenues from gaming may be used for donation to charitable organizations and to help fund operations of local governmental agencies; and

WHEREAS, land within the boundaries of the City, if taken into trust by the United States for the benefit of the Nation, will be removed from the City's tax rolls and an extensive entertainment facility and ancillary development will be built thereon, making the Nation a substantial presence within the City, creating increased demand for the services of local governmental agencies; and

WHEREAS, the Nation desires to compensate the City for land removed from its tax rolls by making a payment in lieu of taxes to the City; and

WHEREAS, the Nation desires to benefit local governmental agencies and charitable organizations for the benefit of Native Americans in Kansas by sharing its net revenue as hereinafter set forth; and

WHEREAS, the Nation and the State have negotiated the terms and conditions of this Compact in good faith so as to provide for the mutual governmental purposes and to

provide a regulatory framework for the operation of certain Class III gaming which is intended to (a) insure the fair and honest operation of such gaming activities; (b) maintain the integrity of all activities conducted in regard to such gaming activities; (c) prevent unsavory and unsuitable persons from having any direct or indirect involvement with gaming activities at any time or in any capacity; (d) establish and maintain responsible accounting practices and procedures; (e) maintain effective control over the financial practices related to gaming activities, including establishing the minimum procedures for internal fiscal affairs and the safeguarding of assets and revenues and reliable record-keeping; (f) prevent cheating and fraudulent practices; and (g) protect the health, welfare and safety of the citizens of the Nation and the State; and

WHEREAS, the parties hereto deem it to be in their respective best interests to enter into this Compact;

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the Nation and the State enter into the following Compact.

SECTION 1. TITLE.

This document shall be referred to as "The Sac & Fox Nation of Missouri in Kansas and Nebraska - State of Kansas Gaming Compact for Class III Gaming."

SECTION 2. DEFINITIONS.

For purposes of this Compact:

(a) "Act" means the Indian Gaming Regulatory Act, Pub.L. 100-497, 25 U.S.C. § 2701 et seq.

(b) "Applicant" means any person who has applied for or is about to apply for a license or finding of suitability under the provisions of this Compact, or employment with the Gaming Operation or Manager, or approval of any act or transaction for which approval

is required or permitted under the provisions of this Compact.

(c) "Application" means a request for the issuance of a license or finding of suitability, or for employment by the Gaming Operation, or for approval of any act or transaction for which approval is required or permitted under the provisions of this Compact.

(d) "City" means the City of Kansas City, Kansas, its authorized officials, agent and representatives.

(e) "Class III gaming" means all forms of gaming that are not Class I gaming or Class II gaming, as defined in sections 4(6) and 4(7) of the Act, 25 U.S.C. §§ 2703(6) and (7).

(f) "Commission" means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.

(g) "Compact" means the Sac & Fox Nation of Missouri in Kansas and Nebraska - State of Kansas Gaming Compact.

(h) "Credit instrument" means a writing which evidences a gaming debt owed to the Gaming Operation, and includes any writing taken in consolidation, redemption or payment of a prior credit instrument.

(i) "Distributor" means a person who distributes slot machines or gaming devices for use or play in the Gaming Facility.

(j) "Enterprise" means any corporation (other than a "publicly traded corporation" as defined hereinafter), firm, partnership, limited partnership, trust, or other form of business organization other than a Tribal enterprise wholly owned by the Nation; provided, however, that the term "enterprise" shall also include each corporation, firm, partnership, limited partnership trust or other form of business organization not a natural

person which, directly or indirectly, owns, has the power or right to control or holds with the power to vote all or any part of the outstanding voting securities, partnership interests, limited partnership interests or beneficial interest in a trust which holds or applies for a license or finding of suitability under this Compact.

(k) "Entertainment Facility" means the Nation's Entertainment and Gaming Facility to be located on trust lands in Kansas City, Kansas.

(l) "Equity security" means for each of the following:

(1) Corporation - Any voting stock, or similar security; any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; any warrant or right; or any security having a direct or indirect participation in the profits of the issuer.

(2) Limited partnership - an interest representing the right of a general or limited partner to receive from a limited partnership: a share of the profits; any other compensation by way of income; or a return of any or all of his contribution to capital of the limited partnership; or the right to exercise any of the rights or powers provided in Chapter 56 of the Kansas Statutes Annotated.

(3) Partnership - an interest representing the right of a partner to receive from a partnership: a share of the profits; any other compensation by way of income; or a return of any or all of his contribution to capital of the partnership; or the right to exercise any of the rights or powers provided in Chapter 56 of the Kansas Statutes Annotated.

(m) "Executive Director" means the Executive Director appointed by the Tribal Gaming Agency pursuant to Section 6(b) of this Compact.

(n) "Finding of suitability" means an approval granted to a person or enterprise directly or indirectly involved with the Gaming Operation and relates only to the specified

involvement for which it was made. If the nature of the involvement changes from that for which the applicant is found suitable, the Tribal Gaming Agency may require the person or enterprise to submit for a determination of suitability in the new capacity.

(o) "Game" and "gambling game" means any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including any banking or percentage game.

(p) "Gaming" or "gambling" means to deal, operate, carry on, conduct, maintain or expose for play any game, slot machine, gaming device, pari-mutuel operation, off-track pari-mutuel operation, interstate common pari-mutuel pool, race book or sports pool as defined in this Compact.

(q) "Gaming device" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game or which determines the outcome of a game. The term does not include a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined.

(r) "Gaming employee" means any natural person employed in the operation or management of the Gaming Facility, whether employed by or contracted to the Nation or by any person or enterprise providing on or off-site services to the Nation within or without the Gaming Facility regarding any Class III gaming activity or by the Manager, including:

- (1) Accounting or internal auditing personnel who are directly involved in any recordkeeping or the examination of records associated with revenue from gaming;
- (2) Boxmen;
- (3) Cage and counting room personnel;
- (4) Cashiers;
- (5) Change personnel;
- (6) Collection personnel;
- (7) Dealers or croupiers;
- (8) Floormen;
- (9) Hosts or other persons empowered to extend credit or complimentary services;
- (10) Keno runners and writers;
- (11) Machine mechanics;
- (12) Odds makers and line setters;
- (13) Pit bosses;
- (14) Security personnel;
- (15) Shift bosses;
- (16) Supervisors or managers;
- (17) Surveillance personnel; and
- (18) Ticket writers.

"Gaming employee" also includes any natural person whose employment duties require or authorize access to restricted areas of the Gaming Facility not otherwise opened to the public, but does not include bartenders, cocktail waitresses or other persons engaged

exclusively in preparing or serving food or beverages.

(s) "Gaming equipment" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming, any game or sports pool that would not otherwise be classified as a gaming device, including dice, playing cards, equipment which affects the proper reporting of gaming revenue, computerized systems of betting at a sports pool, computerized systems for monitoring gaming devices and devices for weighing or counting money.

(t) "Gaming Facility" or "gaming facilities" means the land together with all buildings, improvements and facilities used or maintained in connection with the conduct of Class III gaming on Tribal lands as authorized by this Compact.

(u) "Gaming Operation" means the enterprise owned by the Nation on Tribal lands for the conduct of Class III gaming in any Gaming Facility.

(v) "Gaming services" means the providing of any goods or services to the Nation directly in connection with the operation of Class III gaming in the Gaming Facility, including gaming devices, gaming equipment, maintenance or security services for the Gaming Facility.

(w) "Gross gaming revenue" means the total of all cash received as winnings, cash received in payment for credit extended by the Gaming Operation to a patron, and compensation received by the Gaming Operation for conducting any game in which the Gaming Operation is not a party to the wager, less the total of all cash paid out as losses to patrons.

(x) "Internal control system" means written administrative and accounting procedures for the purpose of exercising effective control over the internal fiscal affairs of the Nation's Gaming Operation.

(y) "Interstate common pari-mutuel pool" means a pari-mutuel pool consisting of pari-mutuel wagers placed at a track, its intrastate betting locations, other jurisdictions and the off-track pari-mutuel wagers placed and accepted by pari-mutuel books.

(z) "Kansas police" means the Kansas State Police, Kansas Bureau of Investigation, and any other law enforcement agency with jurisdiction to enforce the laws of the State and the City within the City.

(aa) "License" means an approval or certification issued by the Tribal Gaming Agency to any natural person or enterprise to be involved in the Gaming Operation or in the providing of gaming services to the Gaming Operation.

(bb) "Licensee" means any natural person or enterprise who has been approved, licensed, certified or found suitable by the Tribal Gaming Agency to be involved in the Gaming Operation or in the providing of gaming services to the Gaming Operation.

(cc) "Live Broadcast" means an audio and video transmission of a race, or series of races, as it occurs at a track, whether or not it is furnished by a disseminator for a fee.

(dd) "Management Contract" means the Development and Management Agreement entered into by and between the Nation and the Manager and approved pursuant to the Act.

(ee) "Manager" means the person or enterprise that has entered into the Management Contract.

(ff) "Manufacturer" means a person who manufactures slot machines or gaming devices for use or play in the Gaming Facility.

(gg) "Nation" means the Sac & Fox Nation of Missouri in Kansas and Nebraska, its authorized officials, agents and representatives.

(hh) "Off-track pari-mutuel wager" means a wager placed by a patron and accepted by the Gaming Operation's pari-mutuel book on a race or races offered as part of an interstate common pari-mutuel pool whether or not the wager is actually included in the total amount of the interstate wagering pool.

(ii) "Ordinance" means the Ordinance adopted by the Nation governing gaming activities at the Gaming Facility.

(jj) "Pari-mutuel" means a system of wagering on a race or sporting event whereby the winners divide the total amount wagered, after deducting commission, fees, and taxes, in proportion to the amount individually wagered.

(kk) "Principal" means for each of the following:

(1) Corporation - each of its officers and directors; each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager; and each beneficial owner of voting securities.

(2) Limited partnership - each general partner; each limited partner owning more than ten percent of the limited partnership interests.

(3) Partnership - each of its owners or partners.

(4) Proprietorship - each owner.

(5) Publicly traded corporation - each officer, director and employee that is, or is to become actively and directly engaged in the administration and supervision of, or any other significant involvement with, the activities of a subsidiary that is or will be involved in the Gaming Facility of the Nation; and each of its shareholders who own more than ten percent of the voting securities of the publicly traded corporation.

(6) Trust - each trustee and beneficiary.

The term "principal" shall also mean each person other than a banking institution, insurance

company, investment company registered under the Investment Company Act of 1940 or investment banking firm, who has provided financing for an enterprise constituting more than ten percent of the total financing of the enterprise.

(ll) "Publicly traded corporation" means any corporation or other legal entity except a natural person which has one or more classes of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 781), or is an issuer subject to section 15(d) of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 780).

(mm) "Race book" means the business of accepting wagers upon the outcome of any event held at a track which uses the pari-mutuel system of wagering.

(nn) "Regulation" means a rule, standard, directive or statement of general applicability which effectuates the provisions and policy of this Compact or the Ordinance.

(oo) "Reservation" or "Tribal lands" means Sac & Fox Nation of Missouri in Kansas and Nebraska Indian lands as defined by 25 U.S.C. § 2703 (4)(A) and (B), subject to the provisions of 25 U.S.C. § 2719.

(pp) "Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator in playing a gambling game which is presented for play by the machine or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or any thing of value, whether the payoff is made automatically from the machine or in any other manner.

(qq) "Sports pool" means the business of accepting wagers on sporting events by any system or method of wagering other than the system known as the pari-mutuel method of wagering.

(rr) "State" means the State of Kansas, its authorized officials, agents and representatives.

(ss) "State Gaming Agency" means the Kansas Lottery or other agency designated by the State by written notice to the Nation as the single state agency primarily responsible for oversight of Class III gaming as authorized by this Compact.

(tt) "Subsidiary" means a corporation all or any part of whose outstanding voting securities are owned, subject to a power or right of control, or held with power to vote by a publicly traded corporation or other holding company.

(uu) "Track" means an in-state or out-of-state facility licensed to operate horse or other racing where pari-mutuel wagering on races is conducted. Where applicable, the term also includes a person or governmental agency in Kansas or outside Kansas that operates a track or shares in its revenues and also includes an association of tracks.

(vv) "Tribal Gaming Agency" means the agency of the Nation, as the Nation may from time to time designate by written notice to the State, as the single Tribal agency primarily responsible for regulatory oversight of Class III gaming as authorized by this Compact. No employee of the Gaming Operation may be a member or employee of the Tribal Gaming Agency.

(ww) "Tribal law enforcement agency" means the police force of the Nation established and maintained by the Nation pursuant to the Nation's powers of self-government to carry out law enforcement within the Tribal Lands.

(xx) "Tribal" means the Sac & Fox Nation of Missouri in Kansas and Nebraska, its authorized officials, agents and representatives.

SECTION 3. FINDINGS.

As the basis for this Compact, the Nation and the State have made the following findings:

(a) A principal goal of Federal Indian policy is to promote Tribal economic development, Tribal self-determination and strong Tribal government.

(b) The State recognizes the positive impacts that gaming may provide to the Nation. It is the policy of the Nation to exercise and retain its rights to regulate gaming activities upon its lands and reservation for the purposes of encouraging Tribal employment, economic and social development and funding of Tribal services while ensuring the fair and lawful operation of gaming and the prevention of corrupt and criminal influences. The Nation will utilize net revenues generated by gaming to fund programs that provide important governmental services to Tribal members and Reservation residents. These programs include education, health and human resources, housing development, road construction and maintenance, sewer and water projects, police, fire and judicial services, economic development, and any other purpose authorized under the Act.

(c) The State further recognizes that the positive economic effects of such gaming may extend beyond Tribal lands to the Nation's neighbors and surrounding communities. These economic benefits, which include increased tourism and related economic development activities, will generally benefit all of northeast Kansas and help to foster mutual respect and understanding among Indians and non-Indians.

(d) The Nation and the State jointly wish to protect their citizens from any criminal involvement, or involvement by unsavory or unsuitable persons in the gaming activities regulated under this Compact.

(e) This Compact is intended to assure that gaming is conducted fairly and honestly by the Nation, its principals, employees, Manager and the patrons of the Gaming Operation.

(f) This Compact shall govern the licensing, regulation, and operation of Class III gaming conducted by the Nation on Tribal lands located within the State.

SECTION 4. AUTHORIZED CLASS III GAMING.

(a) Authorized gambling activities. Subject to the terms and conditions of this Compact, the Nation may conduct or operate any of the following gambling activities:

(1) any gambling game, slot machine or gaming device that is now or hereafter approved or authorized under the provisions of the Nevada Gaming Control Act or the Kansas Statutes Annotated;

(2) a race book, an interstate common pari-mutuel pool, off-track pari-mutuel wagering and pari-mutuel wagering consistent with the rules of the Kansas Racing Commission as amended from time to time; provided, however, that the gambling activities authorized under this subparagraph (2) shall only be permitted pursuant to a written agreement between the Nation and each race track in Kansas within 40 miles of the Entertainment Facility, but the written agreement shall in no event authorize compensation for the race track greater than that which is authorized by Kansas law or regulation for the track operator;

(3) a sports book and a sports pool; and

(4) any other gambling activity that is approved by the Tribal Gaming Agency and the State Gaming Agency.

(b) Enforceability of credit instruments. Credit instruments accepted by the Gaming Operation are valid and enforceable pursuant to the Ordinance. The Governor of the State shall propose legislation that provides that credit instruments accepted by the

Gaming Operation are valid and may be enforced through legal process in the courts of the State, and that except as provided in the Ordinance and Section 18 of this Compact, gaming debts not evidenced by a credit instrument are void and unenforceable and do not give rise to any administrative or civil cause of action.

(c) **Prohibited activities.** The Nation may not conduct any form of Class III gaming which is not expressly enumerated in Section 4(a) above, unless this Compact is amended in accordance with Section 26 of this Compact.

(d) **Prohibited wagers.** No wagers may be accepted or paid by the Gaming Operation on:

(1) Any amateur sports event held in Kansas, including, but not limited to high school, college and university sports events;

(2) Any event held outside Kansas, if any participant in the event represents a public or private institution located in Kansas, including, but not limited to, a high school, college or university;

(3) The outcome of any election for any public office both within and without Kansas;

(4) Any event, regardless of where it is held, involving a professional team whose home field, court, or base is in Kansas, or any event played in Kansas involving a professional team, if, not later than 30 days before an event or the beginning of a series of events, the team's governing body files with the Tribal Gaming Agency a written request that wagers on the event or series of events be prohibited (for purposes of this subsection 4(d)(4), "professional team" means two or more persons who join together to participate in athletic sports events and who receive any compensation in excess of actual expenses for their participation in such events; provided, however, that this definition shall not be

construed to apply to professional boxing); and

(5) Any event other than a horse race or an athletic sports event, unless the Tribal Gaming Agency and the State Gaming Agency both permit otherwise in writing.

(e) Prohibition on attendance of minors. No person under 21 years of age shall be admitted into the Gaming Facility, or be permitted to play or place wagers at, or collect winnings from, whether personally or through an agent, any gambling game, slot machine, gaming device, race book, sports pool or pari-mutuel operation.

(f) Prohibition on employment of minors. No person under the age of 21 shall be employed as a gaming employee, nor be employed in the service of alcoholic beverages.

(g) Prohibition on firearms. No person other than a State or federal law enforcement officer, or member of the Kansas police, or agent of the Tribal Gaming Agency or Tribal law enforcement agency shall be permitted to possess firearms or weapons in the Gaming Facility.

SECTION 5. REGULATIONS AND ORDINANCES REGULATING THE OPERATION AND MANAGEMENT OF THE GAMING OPERATION.

The Tribal Gaming Agency or the Tribal Council may, from time to time, adopt, amend or repeal such regulations or ordinances, consistent with the policy, objects and purposes of this Compact as it may deem necessary or desirable in the interests of the Nation and the State in carrying out the policy and provisions of this Compact. The Nation has enacted an Ordinance regulating the operation and management of the Gaming Operation, which is set forth in Appendix A to this Compact. The Nation shall notify the State Gaming Agency and the City of any intent to amend or repeal the Ordinance set forth in Appendix A, or to adopt new ordinances or regulations, and shall request the concurrence of the State Gaming Agency for such adoption, amendment or repeal. State Gaming

Agency concurrence shall be deemed granted unless written disagreement within 30 days of submission of the revised Ordinance or regulations is delivered to the Tribal Gaming Agency. The State Gaming Agency shall concur with the proposed adoption, amendment or repeal upon request, unless it finds that such action would have a material adverse impact on the public interest or the citizens of Kansas in the integrity of the Gaming Operation. If the State Gaming Agency disagrees with all or any portion of the proposed adoption, amendment or repeal of the Ordinance or regulations, it shall set forth with specificity the reasons for such disagreement. Upon a notice of disagreement, the parties shall meet, and in good faith try to resolve the differences. If unsuccessful, the matter shall be resolved pursuant to Section 19 of this Compact.

SECTION 6. TRIBAL ENFORCEMENT OF COMPACT PROVISIONS.

(a) Tribal Gaming Agency. The primary responsibility for the on-site regulation, control and security of the Gaming Operation and Gaming Facility authorized by this Compact, and for the enforcement of this Compact, shall be that of the Tribal Gaming Agency. As part of its responsibilities, the Tribal Gaming Agency shall ensure that the Gaming Operation and Manager will:

- (1) comply with all relevant laws;
- (2) provide for the physical safety of personnel employed by the Gaming Operation;
- (3) provide for the physical safety of patrons in the Gaming Facility;
- (4) provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;
- (5) provide for the protection of the patrons and the Gaming Facility's property from illegal activity;

- (6) detain persons who may be involved in illegal acts for the purpose of notifying the law enforcement authorities; and
- (7) record and investigate any and all unusual occurrences related to gaming activity within the Gaming Facility. Each such incident, without regard to materiality, shall be assigned a sequential number and, at a minimum, the following information shall be recorded in indelible ink in a bound notebook from which pages cannot be removed and each side of each page of which is sequentially numbered:
 - (A) the assigned number;
 - (B) the date;
 - (C) the time;
 - (D) the nature of the incident;
 - (E) the person involved in the incident; and
 - (F) the name of the Tribal or State gaming inspector investigating the incident.

(b) Executive Director; supervisors. The Tribal Gaming Agency shall employ at least three full-time supervisory employees, one of whom shall be designated as Executive Director. The Executive Director shall have overall responsibility for the administrative functions of the Tribal Gaming Agency. One supervisor shall have primary responsibility for the processing of applications and the coordination of investigations with the State Gaming Agency. One supervisor shall have primary responsibility for the regulation of the Gaming Operation. The Executive Director and the supervisors shall have at least two years' experience as an employee of a state agency having regulatory authority over gaming

activities, or of the Tribal Gaming Agency or of both combined, or two years' experience in gaming operations, the practice of gaming law, or gaming control or regulation, and shall devote their entire time and attention to the business of the Tribal Gaming Agency.

(c) Inspectors. The Tribal Gaming Agency shall employ qualified inspectors or agents under the authority of the Tribal Gaming Agency. Said inspectors or agents shall be independent of the Gaming Operation, and shall be supervised and accountable only to the Tribal Gaming Agency.

(d) Reporting of violations. Tribal gaming inspectors or agents shall have unrestricted access to the Gaming Facility during all hours of gaming operation, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. Any suspected violation(s) of the provisions of this Compact, or of the Ordinance or regulations by the Gaming Operation, Manager, a gaming employee, or any person on the premises, whether or not associated with the Gaming Operation, shall be reported immediately to the Tribal Gaming Agency and to the State Gaming Agency.

(e) Investigation and sanctions. The Tribal Gaming Agency shall investigate any reported violation of this Compact's provisions and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary. The Nation's Ordinance includes procedures for the suspension, revocation, limitation or conditioning of any license or finding of suitability, the suspension or termination of gaming employees, and the imposition of civil fines for violations of this Compact, the Ordinance or regulations.

(f) Reporting to State Gaming Agency. The Tribal Gaming Agency shall forward copies of all completed investigation reports and final dispositions to the State

Gaming Agency on a continuing basis. If requested by the Tribal Gaming Agency, the State Gaming Agency shall assist in any investigation initiated by the Tribal Gaming Agency, and provide other services requested by the Tribal Gaming Agency to ensure proper compliance with the provisions of this Compact, the Ordinance, laws of the Nation, or applicable laws of the State.

(g) Quarterly meetings. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this Compact, representatives of the Tribal Gaming Agency and the State Gaming Agency shall meet, not less than on a quarterly basis, to review past practices and examine methods to improve the regulatory program created by this Compact. The meetings shall take place at a location selected by the Tribal Gaming Agency. The State Gaming Agency prior to or during such meetings shall disclose to the Tribal Gaming Agency any concerns, suspected activities or pending matters reasonably believed to possibly constitute violations of this Compact by any person or enterprise, if such disclosure will not compromise the interest sought to be protected.

SECTION 7. STATE ENFORCEMENT OF COMPACT PROVISIONS.

(a) Monitoring. The State Gaming Agency shall, pursuant to the provisions of this Compact, have the authority to monitor the Gaming Operation to ensure that the operation is conducted in compliance with the provisions of this Compact, the Ordinance and regulations. In order to properly monitor the Gaming Operation, agents of the State Gaming Agency shall have immediate and unrestricted access to all areas of the Entertainment Facility during normal operating hours without giving prior notice to the Gaming Operation; provided, however, that the monitoring activities of these agents shall not interfere with the normal functioning of the Gaming Operation; and provided, further, that before agents of the State Gaming Agency shall be entitled to enter the non-public

areas of the Entertainment Facility, they shall provide proper identification to the Tribal Gaming Agency.

(b) Access to records. Agents of the State Gaming Agency shall have authority to review during normal business hours, all records maintained by the Gaming Operation or Manager related to the Entertainment Facility; provided, however that any information derived therefrom, shall be deemed confidential and proprietary financial information of the Nation and shall not be disclosed by the State Gaming Agency to any third party other than the Tribal Gaming Agency, or in a proceeding under Section 19 of this Compact, or third parties designated by the Nation or Manager.

(c) Tribal Gaming Agency notification. At the completion of any inspection or investigation by the State Gaming Agency, copies of the inspection or preliminary investigative report shall be forwarded to the Tribal Gaming Agency within five days.

SECTION 8. CRIMINAL JURISDICTION.

(a) Tribal criminal jurisdiction. In enforcing the terms and provisions of this Compact and the Ordinance, the Nation shall exercise exclusive criminal jurisdiction over members of the Nation. The Ordinance makes it a crime to cheat at gambling. For purposes of such Ordinance, "cheat" means to alter the selection of criteria which determine the result of a game, or the amount or frequency of payment in a game. The Ordinance also makes it unlawful for any member of the Nation:

(1) To alter or misrepresent the outcome or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players.

(2) To place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid

anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome.

(3) To claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gambling game, with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won.

(4) Knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this Compact or the Ordinance, with the intent that the other person play or participate in that gambling game.

(5) To place or increase a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including past-posting and pressing bets.

(6) To reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including pinching bets.

(7) To manipulate, with the intent to cheat, any component of a slot machine or gaming device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a slot machine or gaming device, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game. _____

(8) Knowingly to use other than coins or tokens approved by the Tribal Gaming Agency or other lawful coin, legal tender of the United States of America, or to use coin not of the same denomination as the coin intended to be used in the gambling game.

(9) To possess, with the intent to use, any device to assist in projecting the outcome of the game, in keeping track of the cards played, in analyzing the probability of the occurrence of an event relating to the game, or in analyzing the strategy for playing or betting to be used in the game.

(10) To use any device or means to cheat, or to possess any such device while at the Gaming Facility.

(b) State criminal jurisdiction. In enforcing the terms and provisions of this Compact and its criminal laws, the State shall exercise exclusive criminal jurisdiction over non-members of the Nation in accordance with 18 U.S.C. § 3243. The Governor of the State shall propose legislation which makes it a felony for any non-member of the Nation to engage in any of the activities set forth in Section 8(a) of this Compact.

(c) Cross deputization agreement. The State and the Nation, to the extent permitted by law, agree to enter into such cross-deputization agreements as may be necessary and proper to facilitate cooperation between State, City and Tribal law enforcement personnel. Such agreements must, at a minimum, provide the Kansas police immediate and unrestricted access to any part of the Entertainment Facility, whether or not secured, to enforce State or local criminal laws, or investigate or make arrests for gambling and related crimes as permitted in this Compact.

(d) Federal criminal jurisdiction. Nothing contained herein shall be deemed to modify or limit existing federal criminal jurisdiction over the Gaming Operation authorized under this Compact.

SECTION 9. LIABILITY FOR DAMAGES TO PERSONS AND PROPERTY.

(a) **Tort Remedies.** The Nation will establish reasonable procedures for the disposition of tort claims arising from alleged injuries to patrons of its Entertainment Facility. The Nation shall not be deemed to have waived its sovereign immunity from suit with respect to such tort claims by virtue of any provision of this Compact, but may adopt a remedial system analogous to that available for similar claims arising against the State or such other remedial system as may be appropriate following consultation with the State Gaming Agency.

(b) **Public liability insurance for the Entertainment Facility.** During the term of this Compact, the Nation and Manager shall maintain public liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage and public liability insurance policies with coverage to limits of \$25,000,000. The Nation's insurance policy shall include an endorsement providing that the insurer may not invoke Tribal sovereign immunity up to the limits of the policy set forth above. The Nation shall indemnify, defend and hold harmless the State, its officers, directors, employees and agents from and against any claims, damages, losses or expenses asserted against or suffered or incurred by the State or its officers, directors, employees and agents (except as may be the result of their own negligence or willful misconduct) based upon or arising out of any bodily injury or property damage resulting or claimed to result in whole or in part from any act or omission of the Tribe relating to the inspection of any gaming or gaming related facilities, or any rectification thereof, pursuant to this Compact or the Ordinance regarding public health, safety and welfare.

(c) **Contract remedies.** The Nation waives its sovereign immunity from unconsented suit for contract claims against the Entertainment Facility up to a monetary

limit not to exceed the amount in dispute and not to exceed the net worth of the Entertainment Facility, whichever is less.

(d) State court jurisdiction. The courts of the State shall have jurisdiction to hear and decide contract claims and insured tort claims against the Nation or the Entertainment Facility as provided in this Section.

SECTION 10. BACKGROUND INVESTIGATIONS OF GAMING EMPLOYEES.

(a) Background investigations prior to employment.

(1) The Gaming Operation, prior to hiring a prospective gaming employee, shall obtain sufficient information and identification from the applicant on forms to be furnished by the Tribal Gaming Agency to permit a thorough background investigation. The information obtained shall include, at a minimum, name (including any aliases), current address, date and place of birth, criminal arrest and conviction record, social security number, current fingerprints, sex, height, weight and a current photograph. This information shall be provided in writing to the Kansas Bureau of Investigation, which shall conduct the background investigation and provide a written report to the Tribal Gaming Agency and the State Gaming Agency regarding each applicant within 60 days of receipt of the request.

(2) The Gaming Operation may employ on a probationary basis any prospective gaming employee, except cage and counting room personnel, who represents in writing that he or she does not fall within any of the criteria set forth in Section 10(a)(3) below, and who has passed a preliminary criminal background investigation by the State, until such time as the written report on the applicant's background investigation is completed. For purposes of this paragraph, the State Gaming Agency shall notify the Gaming Operation of the results of the preliminary criminal background check within 24 hours. Such notification shall be orally communicated and shall be confirmed in a writing

mailed to the Gaming Operation within the same 24-hour period.

(3) The Gaming Operation shall not employ as a gaming employee, and shall terminate any probationary gaming employee, if the report on the applicant's background investigation finds that the applicant has:

(A) been convicted of any felony, gaming-related offense, or any offense related to larceny or embezzlement;

(B) knowingly and willfully provided materially important false statements or information on his employment application, or misstated or otherwise attempted to mislead the Nation with respect to any material fact contained in the employment application;

(C) been identified in the published reports of any federal or state legislative or executive body, or state regulatory agency having authority over gambling activities, as being a member or associate of organized crime, or as being of notorious or unsavory reputation;

(D) had a work permit objection sustained by the Nevada Gaming Commission, or had a work permit or license revoked or denied by the Nevada Gaming Commission or the New Jersey Casino Control Commission, or by any other state regulatory agency having authority over gambling activities; or

(E) otherwise been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

(b) Background investigations of gaming employees during employment. The Nation and the State Gaming Agency shall retain the right to conduct such additional background investigations of any gaming employee at any time during the term of that person's employment. Any gaming employee found to fall within any of the criteria set forth in Section 10(a)(3) above shall be dismissed.

(c) Identification cards. The Tribal Gaming Agency shall require all gaming employees to wear, in plain view, identification cards issued by the Tribal Gaming Agency which shall include photo, first name and a four digit identification number unique to the individual, a Tribal seal or signature, and a date of expiration.

SECTION 11. GAMING LICENSING REQUIREMENTS.

(a) Gaming Operation. The Gaming Operation authorized by this Compact shall be licensed by the Tribal Gaming Agency pursuant to the requirements of Section 12 of this Compact prior to commencement of operations. The licensing of the Gaming Operation shall include the licensing of each principal, and of each key employee deemed necessary by the Tribal Gaming Agency. Verification of licensing compliance with this Compact shall be made by the State Gaming Agency and the Tribal Gaming Agency through a joint pre-operation review and mutual letter of compliance. If a dispute arises during the review, it shall be resolved pursuant to Section 19 of this Compact. Any license or finding of suitability granted pursuant to this Compact shall be deemed a revocable privilege.

(b) Key employees. Each key employee of the Gaming Operation and Manager shall be listed on an employee report on forms to be furnished by the Tribal Gaming Agency. The employee report shall be filed with the Tribal Gaming Agency and the State Gaming Agency within 10 days following the end of each calendar quarter. Whenever the

Tribal Agency makes a determination that it is in the best interests of the State and the Nation to require a finding of suitability for any key employee, it shall notify such persons in writing who shall then submit a complete application for a finding of suitability within 30 days after service of the notification. Any key employee whose application for a finding of suitability is denied shall be immediately terminated by the Gaming Operation. The Gaming Agency shall not be restricted by a person's job title in making a determination as to key employee status.

(c) Manager. The Manager (and its principals) that has entered into a Management Contract with the Nation pursuant to Section 14 of this Compact shall be required to be licensed according to the requirements of this Compact; provided, however, that the State Gaming Agency and the Tribal Gaming Agency may mutually determine the suitability of Manager and its principals through verification of their good standing in another jurisdiction where gambling is legal.

(d) Manufacturers and distributors of slot machines and gaming devices. Each manufacturer and distributor of slot machines or gaming devices and their principals shall be required to be licensed by the Tribal Gaming Agency pursuant to the requirements of this Compact prior to the manufacture or distribution of any slot machines or gaming devices for use or play in the Gaming Facility; provided, however, that the State Gaming Agency and the Tribal Gaming Agency may mutually determine the suitability of a manufacturer or distributor through verification of their good standing in another jurisdiction where gambling is legal.

(e) Persons furnishing gaming services. The Tribal Gaming Agency or the State Gaming Agency may require a finding of suitability or require the licensing of any other person or enterprise who furnishes gaming services, property or an extension of credit to the

Gaming Operation, or who has any other material involvement with the Gaming Operation. Any agreement between the Gaming Operation and a person or enterprise that has been found unsuitable, or has been denied a license, or has had a license revoked by the Tribal Gaming Agency shall be immediately terminated without liability to the Nation.

SECTION 12. GAMING LICENSING PROCEDURES.

(a) **Filing.** All applications for a license or finding of suitability shall be made on forms furnished by the State Gaming Agency and the Tribal Gaming Agency and shall be accompanied by the application and investigative fees set forth in the Nation's published schedule of fees. Such application forms shall require, but not be limited to, complete information and details with respect to the applicant's antecedents, habits, character, criminal record, business activities, financial affairs and business associates, covering at least a 10-year period immediately preceding the date of filing of the application.

(b) **Forwarding of applications.** Promptly after the filing of an application by an applicant for a license or finding of suitability and the payment or deposit of all required fees, the Tribal Gaming Agency shall forward the application to the State Gaming Agency which shall commence an investigation of the applicant utilizing the Kansas Bureau of Investigation for this purpose. Upon completion of the investigation, the State Gaming Agency shall forward the results of its investigation in writing to the Tribal Gaming Agency, together with a recommendation on whether the applicant should be granted a license or be found suitable. The Tribal Gaming Agency may accept or reject the State Gaming Agency's recommendation, provided, however, that if a dispute arises over a recommendation of the State Gaming Agency to deny an application, it shall be resolved in accordance with Section 19 of this Compact; provided, however, that no such license or finding of suitability shall issue pending the determination by the arbitrator. The Tribal

Gaming Agency may grant, deny, condition, limit or revoke any license or finding of suitability for any cause it deems reasonable. The decision of the Tribal Gaming Agency on any license or finding of suitability is a final decision, and is not subject to judicial review by the Tribal courts or the courts of the State.

(c) Notification of applicant. The applicant shall be notified by the Tribal Gaming Agency of the approval or denial of the application within 10 days after the Tribal Gaming Agency receives the State Gaming Agency's investigative report and recommendation. The applicant shall not be entitled to receive a copy of the State Gaming Agency's investigative report or any reports or material developed by the Tribal Gaming Agency in connection with the application. The Tribal Gaming Agency shall not grant an application for a license or a finding of suitability unless it is satisfied that the applicant is:

- (1) A person of good character, honesty and integrity;
- (2) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of the Nation or the State or to the effective regulation and control of gaming pursuant to this Compact, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;
- (3) In all other respects qualified to be licensed or found suitable consistent with the provisions and policies set forth in this Compact; and
- (4) Additionally, in the case of the Manager, a person or enterprise that has adequate business probity, competence, and experience in gaming.

(d) Report of changes. After a corporation is licensed or found suitable, including Manager, it shall file a report of each change of its corporate officers and

members of its board of directors with the Tribal Gaming Agency. Each new officer and director shall file a complete application within 30 days after appointment or election. The Tribal Gaming Agency shall forward a copy of the application to the State Gaming Agency for investigation and the new officer and director shall be entitled to continue to exercise all powers of his office unless the Tribal Gaming Agency disapproves the change or denies the application.

SECTION 13. CONFIDENTIALITY OF INFORMATION; PRIVILEGE.

(a) **Confidentiality.** The Tribal Gaming Agency and State Gaming Agency shall maintain a file of all applications for licenses, findings of suitability and employment under this Compact, together with a record of all action taken with respect to those applications. Except as provided in this subsection, all information and data:

(1) Required by the Tribal Gaming Agency or State Gaming Agency to be furnished to them under this Compact or the regulations, or which may be otherwise obtained relative to the finances, earnings or revenue of Manager, or any applicant, or person or enterprise that is employed, licensed or found suitable;

(2) Pertaining to an applicant's criminal record, antecedents and background which have been furnished to or obtained by the Tribal Gaming Agency or State Gaming Agency from any source;

(3) Provided to the members of the Tribal Gaming Agency or State Gaming Agency, or the Executive Director, by a ~~governmental agency, or an informer, or~~ on the assurance that the information will be held in confidence and treated as confidential; and

(4) Obtained by the Tribal Gaming Agency or State Gaming Agency from a manufacturer or distributor relating to the manufacturing of gaming devices, are

confidential and may be revealed in whole or in part only in the course of the necessary administration of this Compact or upon the lawful order of a court of competent jurisdiction. The Tribal Gaming Agency and State Gaming Agency may reveal such information and data to an authorized agent of any agency of the United States Government, any authorized State agency or any other duly authorized regulatory or law enforcement agency of another state.

(b) Notice of Release. Notice of the content of any information or data furnished or released pursuant to Section 13(a)(4) may be given to any applicant or person or enterprise that is licensed or found suitable.

(c) Files. The files, records and reports of the Tribal Gaming Agency and State Gaming Agency shall be open at all times to inspection by each agency's authorized agents.

(d) Absolute privilege of required communications and documents. The Governor of the State shall propose legislation that any communication or document of Manager, an applicant, or licensee which is required by this Compact or the Ordinance, to be made or transmitted to the Tribal Gaming Agency or State Gaming Agency or any of their agents or employees is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action. If such a document or communication contains any information which is privileged pursuant to the laws of the State, that privilege will not be waived or lost because the document or communication is disclosed to the Tribal Gaming Agency or State Gaming Agency or any of their agents or employees. Notwithstanding the provisions of this subsection:

(1) The Tribal Gaming Agency and State Gaming Agency and their agents and employees shall not release or disclose any information, documents or communications provided by Manager, an applicant, or licensee which are privileged pursuant to the laws of

the State, without the prior written consent of Manager, the applicant, or licensee pursuant to a lawful order from a court of competent jurisdiction after timely notice of the proceedings has been given to Manager, the applicant, or licensee.

(2) The Tribal Gaming Agency and State Gaming Agency shall maintain all privileged information, documents and communications in a secure place accessible only to members of the Tribal Gaming Agency and State Gaming Agency and their authorized agents and employees.

SECTION 14. MANAGEMENT CONTRACT.

(a) Notice to State Gaming Agency. The Nation has entered into a Management Contract for the development, operation and management of all or any part of the Entertainment Facility, pursuant to the requirements and provisions of the Act. The Nation shall provide the Tribal Gaming Agency and the State Gaming Agency with copies of the Management Contract as submitted to the Commission, all correspondence and other documentation submitted to the Commission in connection with the Management Contract, and the statement of approval or disapproval of the Management Contract from the Chairman of the Commission.

(b) Qualifications of Manager. In order to ensure the integrity of the operation of the Entertainment Facility and compliance with the provisions of this Compact and the Ordinance, the Manager must be a wholly-owned subsidiary of a publicly traded corporation that has adequate business probity, competence and experience in gaming.

(c) Amendments. Without the prior written consent of the City, unless required by federal authorities, the Nation agrees that it shall not amend the Management Contract if doing so would have the effect of reducing the City's share of the Nation's share of the net revenues as set forth in Section 21 of this Compact.

SECTION 15. OPERATIONAL REQUIREMENTS.

(a) **Internal control system.** In addition to compliance with the Ordinance, regulations and the provisions of this Compact, the Gaming Facility shall be operated pursuant to an internal control system approved by the Tribal Gaming Agency. The internal control system shall be designed to reasonably assure that:

- (1) Assets are safeguarded;
- (2) Financial records are accurate and reliable;
- (3) Transactions are performed only in accordance with management's general or specific authorization;
- (4) Access to assets is permitted only in accordance with management's specific authorization;
- (5) Recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies; and
- (6) Functions, duties and responsibilities are appropriately segregated and performed in accordance with sound practices by competent, qualified personnel.

(b) **Required provisions of internal control system.** The internal control system shall include:

- (1) An organization chart depicting appropriate segregation of functions and responsibilities;
- (2) A description of the duties and responsibilities of each position shown on the organizational chart;
- (3) A detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements of subsection (a).

(c) **Financial statement.** The Gaming Operation shall engage an independent certified public accountant licensed by the State to prepare a certified financial statement covering all financial activities of the Gaming Operation for each calendar or fiscal year. The financial statement shall be prepared in accordance with the auditing procedures published by the American Institute of Certified Public Accountants and shall be submitted to the Tribal Gaming Agency and the State Gaming Agency by May 1 of each year for the preceding calendar year, or within four months of the end of the fiscal year as appropriate.

(d) **Hiring preference.** The Gaming Operation shall give hiring preference to residents of Kansas over non-Kansas residents for employment in all positions not filled by members of the Nation or their spouses or members of other federally recognized Indian tribes, provided that such persons meet the qualifications for the position.

(e) **Commercial bank accounts.** The Entertainment Facility shall maintain commercial bank accounts at one or more financial institutions in the City.

SECTION 16. TRIBAL REIMBURSEMENT FOR EXPENSES INCURRED BY THE STATE; FEES FOR LICENSING AND INVESTIGATION.

The Nation shall reimburse the State Gaming Agency and the Kansas police for all costs and expenses actually incurred in carrying out their responsibilities as authorized under the provisions of this Compact. Reimbursement shall be made for monitoring, investigative, and processing costs. The State Gaming Agency and the Kansas police shall submit verified, detailed statements with supporting documentation on a quarterly basis to the Gaming Agency. The Nation shall reimburse the State Gaming Agency and the Kansas police within 30 days after the receipt of the statement of expenses. In the event a dispute arises, it will be resolved pursuant to Section 19 of this Compact.

SECTION 17. PUBLIC HEALTH AND SAFETY; FEES AND PAYMENTS IN LIEU OF TAXES.

(a) **Compliance.** The construction, maintenance, and operation of the Entertainment Facility shall comply with all applicable Federal, State, and City codes, laws, and regulations governing buildings, safety, maintenance, plumbing, fire safety, electricity, entertainment, nudity, sexual conduct, alcohol and handling of food and beverages, including requiring persons selling alcoholic beverages to obtain required work permits. The respective State and City officials charged with enforcement of such codes, laws, and regulations must be provided access to inspect and assure compliance. In the event of non-compliance, the State or City may seek relief against the Nation or the Manager as appropriate under the law in question. To the extent necessary, the Nation hereby consents to waive its sovereign immunity against such action and consents to the jurisdiction of the appropriate State or City agency or court.

(b) **Emergency service accessibility.** The Nation and the Tribal Gaming Agency shall make provisions for adequate emergency accessibility and service of the Entertainment Facility.

(c) **Fees.** To compensate the City and State for inspection and enforcement of the laws relating to public health and safety as set forth in Section 17(a), the Nation agrees to pay all applicable permit fees and license fees, including, but not limited to, building-permit fees and liquor license fee

(d) **Payments in lieu of taxes.** In order to provide partial funding for operations of local governmental agencies providing services directly or indirectly benefitting the Entertainment Facility, the Nation agrees to pay directly to the City the following contributions:

(1) A contribution in an amount equal to all of the real and personal property taxes of all political subdivisions of Wyandotte County that would be imposed each year on the Entertainment Facility as if it were a privately-owned retail commercial establishment and placed on the tax rolls. The Nation shall commence the payment of such contribution on a semi-annual basis to the City within 90 days after the date on which the Entertainment Facility opens for business if said date falls between March 22 and June 20 or between September 21 and December 20, and if said date is between December 20 and the ensuing March 23, the first semi-annual payment shall be on the next June 20 and if said date is between June 20 and the ensuing September 22, the first semi-annual payment shall be on the next December 20. Thereafter, the semi-annual payments shall be on June 20 and December 20.

(2) A contribution in an amount equal to the City's occupation tax that would be imposed each year on the Entertainment Facility as if it were a privately-owned establishment; provided, however, that all gaming activities shall be one integrated retail establishment for purposes of calculation of the contribution.

(e) Access to records. The files, records and reports of the Nation and the City related to compliance with Section 17(c) and (d) of this Compact shall be open at all times to inspection by each party's authorized agents.

SECTION 18. PATRON DISPUTES.

(a) Refusal by Gaming Operation to pay alleged winnings; investigation. Whenever the Gaming Operation refuses payment of alleged winnings to a patron, the Gaming Operation and the patron are unable to resolve the dispute to the satisfaction of the patron and the dispute involves:

(1) At least \$500, the Gaming Operation shall immediately notify the Tribal Gaming Agency; or

(2) Less than \$500, the Gaming Operation shall inform the patron of his right to request that the Tribal Gaming Agency conduct an investigation. The Tribal Gaming Agency, through an inspector, shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

(b) Notice of inspector's decision. The Tribal Gaming Agency inspector shall mail written notice by certified mail, return receipt requested, to the Gaming Operation and the patron of his decision resolving the dispute within 30 days after the date that the Tribal Gaming Agency first receives notification from the Gaming Operation or a request to conduct an investigation from the patron.

(c) Effective date of inspector's decision. The decision of the inspector is effective on the date it is received by the aggrieved party as reflected on the return receipt.

(d) Petition for review by Tribal Gaming Agency. Within 30 days after the date of receipt of the written decision of the inspector, the aggrieved party may file a petition with the Tribal Gaming Agency requesting a review of the decision. The Tribal Gaming Agency may set a hearing on the matter or may make a decision based solely upon the inspector's decision and other documentation provided to it by the patron and the Gaming Operation. The Tribal Gaming Agency shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in Section 18(b).

(e) Limitation of liability. The liability of the Gaming Operation in any proceeding under this Section shall be limited to the amount of the alleged winnings and a patron shall not be entitled to an award of special or punitive damages, or damages for mental distress.

(f) Judicial review. The Governor of the State shall propose legislation that provides that decisions of the Tribal Gaming Agency pursuant to this Section shall be subject to judicial review by the courts of the State pursuant to the provisions of Chapter 77 of the Kansas Statutes Annotated. Upon enactment of such legislation, the Nation agrees that it will waive its sovereign immunity from unconsented suit for any such judicial review.

SECTION 19. DISPUTE RESOLUTION.

(a) State and Nation.

(1) If either party believes the other party has failed to comply with the provisions of this Compact, it shall invoke the following procedure:

(A) The party asserting the noncompliance shall serve written notice upon the other party. The notice shall identify the specific provision of the Compact alleged to have been violated and shall specify the factual basis therefor. The State and the Nation shall thereafter meet within 10 days in an effort to resolve the dispute.

(B) If the dispute is not resolved to the satisfaction of the parties within 30 days after service of the notice set forth above, the dispute shall be adjudicated exclusively by binding arbitration conducted by the American Arbitration Association (the "AAA") in accordance with the arbitration rules of the AAA then in effect. The arbitration shall take place in Kansas City, Kansas or such other place as the parties may agree. In such an arbitration proceeding, each party shall appoint an arbitrator within 10 days of the commencement of the arbitration and the two arbitrators shall mutually appoint a third arbitrator within 20 days of their appointment. If the two arbitrators are unable to agree on the appointment of a third arbitrator within 20 days, the third arbitrator is to be appointed by the AAA. The decision of the majority of the arbitration panel shall be final, binding and unappealable. The costs of the arbitration shall be borne equally by the parties.

Judgment upon the award entered in such arbitration proceeding may be entered and enforced in any state or federal court in the State of Kansas. The Nation and the State hereby expressly consent to the jurisdiction of any state court in Kansas or in any federal court in Kansas to enforce judgment on the arbitration and each expressly grants a waiver of its sovereign immunity from unconsented suit for any such proceedings.

(b) City and Nation. If either the City or the Nation believes the other party has failed to comply with the provisions of Section 17 of this Compact, it shall invoke the following procedure:

(1) The party asserting the noncompliance shall serve written notice upon the other party. The notice shall identify the specific provision of the Compact alleged to have been violated and shall specify the factual basis therefor. The State and the Nation shall thereafter meet within 10 days in an effort to resolve the dispute.

(2) If the dispute is not resolved to the satisfaction of the parties within 30 days after service of the notice set forth above, the dispute shall be adjudicated exclusively by binding arbitration conducted by the American Arbitration Association (the "AAA") in accordance with the arbitration rules of the AAA then in effect. The arbitration shall take place in Kansas City, Kansas or such other place as the parties may agree. In such an arbitration proceeding, each party shall appoint an arbitrator within 10 days of the commencement of the arbitration and the two arbitrators shall mutually appoint a third arbitrator within 20 days of their appointment. If the two arbitrators are unable to agree on the appointment of a third arbitrator within 20 days, the third arbitrator is to be appointed by the AAA. The decision of the majority of the arbitration panel shall be final, binding and unappealable. The costs of the arbitration shall be borne equally by the parties. Judgment upon the award entered in such arbitration proceeding may be entered and

enforced in any state or federal court in the State of Kansas. The Nation and the State hereby expressly consent to the jurisdiction of any state court in Kansas or in any federal court in Kansas to enforce judgment on the arbitration and each expressly grants a waiver of its sovereign immunity from unconsented suit for any such proceedings.

(c) Action to enjoin a Class III gaming activity conducted in violation of the Compact. The parties recognize that the Act at 25 U.S.C. § 2710(d)(7)(A)(ii) provides that the United States District Courts shall have jurisdiction over an action initiated by the State or the Nation to enjoin a Class III gaming activity located on Indian lands and conducted in violation of this Compact.

(d) Manager and Nation. If either the Nation or the Manager believes that the other party has failed to comply with the provisions of the Management Contract, it shall invoke the arbitration procedures set forth in the Management Contract; provided, however, that with respect to entry of judgment on the arbitration award, the courts of the State and the Tribal Court shall each have jurisdiction to enforce the arbitration award and the Nation hereby expressly consents to the jurisdiction of any state court in Kansas and expressly grants a waiver of its sovereign immunity from unconsented suit in any such proceedings, subject to the limitation set forth in Section 6.6 of the Management Contract.

SECTION 20. RESERVATION OF RIGHTS UNDER THE ACT.

(a) Status of Class II gaming. Nothing in this Compact shall be deemed to affect the operation by the Nation of any Class II gaming as defined in the Act, whether conducted within or without the Gaming Facility or gaming facilities, or to confer upon the State any jurisdiction over such Class II gaming conducted by the Nation on its Reservation.

(b) Prohibition on taxation by the State. Except as provided in Sections 16, 17, this Section 20(b) and Section 21 of this Compact, nothing in this Compact shall be deemed

to authorize the State or any political subdivision thereof to impose any tax, fee, charge or assessment upon the Nation or the Gaming Operation. The Nation agrees to have Manager collect at the Entertainment Facility and pay over all Kansas sales and use taxes, alcoholic beverage taxes and hotel occupancy taxes to the State or the political subdivision levying the tax. The Nation further agrees to sell at the Entertainment Facility only tobacco products for which all applicable Kansas taxes are paid. The Nation shall have Kansas income taxes deducted from the wages of its employees at the Entertainment Facility and paid over to the State as required by Kansas law. The Nation agrees to pay all applicable Kansas taxes on utilities furnished to the Entertainment Facility. Nothing in this Compact shall authorize or permit the collection and payment over of any Kansas tax or contribution in lieu of taxes or fee on or measured by gaming transactions, slot machines or gaming devices, gross or net gaming revenues or the Nation's net income, except that the Nation does agree, to the extent that it is required under federal law to withhold federal income tax from or report the gaming winnings of patrons, to withhold State individual income tax from or report gaming winnings of patrons in the amounts set forth in applicable Kansas law.

(c) Preservation of Tribal self-government. Except as set forth in this Compact, nothing shall be deemed to authorize the State or any political subdivision thereof to regulate in any manner the government of the Nation, including the Tribal Gaming Agency, or to interfere in any manner with the Nation's selection of its governmental officers including members of the Tribal Gamin Agency.

SECTION 21. COMMUNITY IMPACT AND NATIVE AMERICAN CONTRIBUTIONS.

(a) Distribution to the City. As a contribution to help fund operations of the local governmental agencies by the City and to defray impacts upon the City that will result from the operation of the Entertainment Facility, the Nation shall share sums distributed

to it pursuant to the provisions of the Management Contract with the City, which shall receive 6.25% of the amounts distributed each month to the Nation pursuant to the Management Contract after monthly payments for debt service and expenses related to enforcement of this Compact and the Nation's Ordinance and regulations. All payments required by this subsection shall be made monthly within ten days after the Nation receives the amounts distributed to it pursuant to the Management Contract.

(b) Distribution to the State. As a contribution to help fund operations of local governmental agencies by the State, specifically the Kansas Highway Patrol, the Department of Transportation, the Department of Human Resources and the Department of Health and Environment, because the Kansas City office of each will have additional demands and staffing resulting from the operation of the Entertainment Facility, the Nation shall share sums distributed to it pursuant to the provisions of the Management Contract with the State, which shall receive 6.25% of the amounts distributed each month to the Nation pursuant to the Management Contract after monthly payments for debt service and expenses related to enforcement of this Compact and the Nation's Ordinance and regulations. All payments required by this subsection shall be made monthly within ten days after the Nation receives the amounts distributed to it pursuant to the Management Contract.

(c) Distribution for the benefit of Native Americans. The Nation shall place 6.25% of the amounts distributed each month to the Nation pursuant to the Management Contract, after payment of monthly payments for debt service and expenses related to enforcement of this Compact and the Ordinance and regulations, into an account administered by the Nation solely for charitable organizations benefitting Native Americans in Kansas, including, without limitation, charitable organizations providing scholarships, job training, education, healthcare and other charitable programs for the benefit of Native

Americans in Kansas.

(d) Maximization of revenues. To maximize the revenues from the operation of the Nation's Entertainment Facility in Kansas City, Kansas, the State agrees that, for the duration of the longest-termed of the financing agreements for the Entertainment Facility or for 30 years, whichever is shorter, the State, through its Governor, shall refuse to concur in a determination by the United States Secretary of Interior, that any other gaming establishment on newly acquired lands in trust for an Indian tribe in Kansas City, Kansas or within a radius of 40 miles from the outermost city limits of the City, would not be detrimental to the surrounding community and shall oppose the conduct of gaming on such newly acquired, noncontiguous lands within that 40-mile radius.

(e) Monthly financial statements. The Nation shall furnish unaudited monthly financial statements and audited annual financial statements on a confidential basis to the State, which shall review them to determine that the Tribe has made accurate revenue sharing payments to the parties entitled thereto under the provisions of this Section 21. The State may invoke the dispute resolution and arbitration provisions of this Compact to cause the Nation to make the appropriate revenue sharing payments hereunder.

(f) Independent audits. The State or the Nation may retain accountants, at their own expense, to:

(1) Conduct periodic audits or review of the books and records of the Gaming Facility or Manager;

(2) Review the accounting methods and procedures used by the Manager;

(3) Review the Manager's internal control procedures and observe methods and procedures used to count and handle cash, chips, tokens, negotiable instruments, and credit instruments;

(4) Examine all accounting and bookkeeping records and ledger accounts of the Manager; and

(5) Review the Manager's compliance with this Compact, the Ordinance and regulations, provided however, that any such audit, review or examination shall be conducted in such a way as to not unreasonably interfere with the operation of the Gaming Facility.

SECTION 22. TRIBAL AUTHORITY IN THE EVENT THAT THE STATE DECLINES TO EXERCISE JURISDICTION

(a) Default authority of Tribal Gaming Agency. In the event that the State Gaming Agency declines to exercise all or any portion of the authority vested in the State Gaming Agency pursuant to this Compact, then the Tribal Gaming Agency shall exercise such authority and carry out the responsibilities set forth therein until and unless the State Gaming Agency advises the Nation in writing that it is prepared to exercise such authority.

(b) Default authority of Tribal law enforcement agency. In the event that the State declines to exercise law enforcement responsibilities vested in it pursuant to this Compact, then the Nation, in conjunction with the federal government, shall carry out such responsibilities until and unless the State agrees to exercise such responsibility.

SECTION 23. SEVERABILITY.

Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this Compact to be invalid, the remaining provisions, sections, and subsections of the Compact shall remain in full force and effect.

SECTION 24. NOTICES.

All notices required or authorized to be served under this Compact shall be served by certified mail (return receipt requested), commercial overnight courier service or by personal delivery, at the following addresses:

**State: Governor
State Capitol, 2nd Floor
Topeka, Kansas 66612**

**City: City Administrator
City Hall
701 North 7th, 9th Fl.
Kansas City, Kansas 66101**

**Nation: Chairperson of the Tribal Council
Route 1, Box 60
Reserve, Kansas 66434**

SECTION 25. EFFECTIVE DATE AND DURATION.

(a) **Effective date.** This Compact shall become effective upon execution by the Governor of the State and the Tribal Chairman, approval by the Secretary of the Interior and publication of that approval in the Federal Register pursuant to the Act.

(b) **Duration.** This Compact shall remain in full force and effect until one of the following events shall occur:

(1) This Compact is terminated by mutual consent of the Nation and the State.

(2) This Compact is determined to be invalid pursuant to a final, non-appealable judgment by a court of competent jurisdiction.

(3) One year passes after publication in the Federal Register of an ordinance or resolution duly adopted by the Nation revoking tribal authority to conduct Class III upon tribal lands, as provided for in 25 U.S.C. § 2710(d)(2)(D).

SECTION 26. AMENDMENTS.

Except for the provisions of Section 21 of this Compact, which shall not be amended during the duration of this Compact, this Compact cannot be amended except in writing by the State and the Nation.

**SECTION 27. ENTIRE AGREEMENT; SUCCESSORS AND ASSIGNS;
NO OTHER COMPACTS.**

This Compact contains the entire agreement of the parties hereto with respect to the matters covered by this Compact and no other statement, agreement, or promise made by any party, officer, or agent of any party shall be valid or binding. This Compact shall be binding upon the successors and assigns of the parties hereto. The Nation and the State shall not enter into any other Compact affecting the Gaming Operation, except as an amendment to this Compact as provided in Section 26 hereinabove.

SECTION 28. GOVERNING LAW.

This Compact shall be governed by and construed in accordance with the laws of the United States and the laws of the State.

SECTION 29. TRIPPLICATE ORIGINALS

This Compact shall be executed in triplicate originals, one for each of the signatures. Each and all are equally valid.

SECTION 30. AUTHORITY TO EXECUTE

Each of the undersigned represents that he or she is duly authorized and has the authority to execute this Agreement on behalf of the party for whom he or she is signing.

STATE OF KANSAS

**SAC & FOX NATION OF MISSOURI
IN KANSAS AND NEBRASKA**


JOAN FINNEY, GOVERNOR

DATE: May 27, 1992


SANDRA KEO, CHAIRPERSON

DATE: May 27, 1992

SECRETARY OF THE INTERIOR

BY:

DATE: _____