



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 03 2012

The Honorable Michell Hicks
Principal Chief, Eastern Band of Cherokee Indians
P.O. Box 455
Qualla Boundary
Cherokee, North Carolina 28719

Dear Chief Hicks:

On June 19, 2012, the Department of the Interior (Department) received the tribal-state class III gaming compact (Compact) between the Eastern Band of Cherokee Indians (Tribe) and the State of North Carolina (State).

Under the Indian Gaming Regulatory Act (IGRA), the Secretary may approve or disapprove a compact within 45 days of its submission. 25 U.S.C. § 2710(d)(8). If the Secretary does not act to approve or disapprove a compact within the prescribed 45-day period, IGRA provides that it is considered to have been approved by the Secretary, “but only to the extent that the Compact is consistent with the provisions of [IGRA].” 25 U.S.C. § 2710(d)(8)(C). Under IGRA, the Department must determine whether the Compact violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians.

DECISION

We have completed our review of the Compact, along with additional documentation submitted by the parties, and concluded that the Compact does not violate IGRA. Therefore, pursuant to 25 U.S.C. § 2710(d)(8)(C), I have decided to approve the Compact. The reasons for this decision are set forth below.

BACKGROUND

The Tribe and the State executed the Compact on November 28, 2011, but did not submit it to the Department at that time. On May 22, 2012, the Tribe and the State executed an amendment to the Compact they had executed on November 28, 2011, which they titled “Addendum to First Amended & Restated Tribal State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina.” (Addendum).

The Addendum provides:

This Addendum is an integral part of the Compact and any provision of the Compact not amended by this Addendum remains in full force and effect. In the event of any conflict between the Compact and this Addendum, this Addendum shall control.

The Tribe submitted both the November 28, 2011 agreement and the May 22, 2012 Addendum to the Department as a single, engrossed compact for our review. We have undertaken our review of both documents *in pari materia*, as a single tribal-state compact under IGRA.¹

1. Revenue Sharing Provisions:

The Compact provides:

In consideration of the substantial revenue sharing covenants by the Tribe...the State grants the Tribe exclusivity for conducting its Live Table Gaming in a geographical zone encompassing all areas within the State of North Carolina west of Interstate Highway I-26, in its location as of the Execution Date.

Compact at § 4.1.

In exchange for the exclusive right to conduct live table games in a defined geographic area, the Tribe has agreed to provide revenue sharing payments to the State as follows:

- 4% of gross revenues from live table games for the first five years of the Compact;
- 5% of gross revenues from live table games for the next five years of the Compact;
- 6% of gross revenues from live table games for the next five years of the Compact;
- 7% of gross revenues from live table games for the next five years of the Compact;
- 8% of gross revenues from live table games for the next ten years of the Compact;

The Compact also states that, for each additional class III gaming facility operated by the Tribe, that the Tribe and the State must enter into a revenue sharing agreement not to exceed 8 percent of gross revenue from live table games before opening such a facility.² Compact at § 4.1.

The Tribe would not be obligated to make its revenue sharing payments to the State in the event that any other person is permitted to operate live table games within the Compact's defined zone of gaming exclusivity. The Compact also provides that the State will use the Tribe's revenue sharing payments for public education purposes. Compact at § 4.1.B.1

¹ The global term "Compact," as used in this letter, refers to the entire agreement reached between the Tribe and the State.

² To the extent that such agreements amend, or attempt to amend the Compact, they must be submitted to the Department for review and approval pursuant to IGRA. See 25 U.S.C. § 2710(d)(8) and 25 C.F.R. § 293.4.

2. Notable Regulatory Provisions

Section 7 of the Compact addresses certain issues relating to development of the Tribe's lands:

The Tribal Council shall institute, through its Planning Board, Sign Committee, and other Council committees, in consultation with private and state sources, a comprehensive study which will result in drafting and enactment of ordinances and regulations designed to preserve the natural beauty of Cherokee trust lands, to protect, preserve, and enhance the natural resources, environmental and aesthetic appearance of Cherokee tribal lands against long term degradation resulting from increased traffic and growth in connection with gaming activities, and to ensure continued quality development utilizing smart growth principles oriented toward the preservation and betterment of Cherokee trust lands. Such ordinances and regulations shall be enacted and in effect on or before two years from the effective date of this Compact amendment. Such ordinances and regulations may be amended as deemed necessary by the Tribe; provided, however, that the Tribe shall not alter any ordinance or regulation if such action will substantively and adversely impact the purposes of these ordinances and regulations as set out hereinabove.

Compact at § 7.

ANALYSIS

A. Revenue Sharing

The Department is committed to adhering to IGRA's statutory limitations on tribal-state gaming compacts. The IGRA prohibits the imposition of a tax, fee, charge, or other assessment on Indian gaming except to defray the state's cost of regulating Class III gaming activities. 25 U.S.C. § 2710(d)(4). The IGRA further prohibits using this restriction as a basis for states refusing to negotiate with tribes to conclude a compact. *Id.*

We review revenue sharing provisions in gaming compacts with great scrutiny. Our analysis as to whether such provisions comply with IGRA first requires us to determine whether the State has offered meaningful concessions to the Tribe. We view this concept as one where the State concedes something it was not otherwise required to negotiate, such as granting the exclusive right to operate Class III gaming or other benefits sharing a gaming-related nexus. We then examine whether the value of the concessions provide substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the Compact.

We note that the Ninth Circuit's recent decision in *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*,³ favorably cited the Department's long-standing policy regarding revenue sharing. While *Rincon* is not binding here because it arose under

³ *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*, 2011 WL 131 S. Ct. 3055 (2011).

IGRA's remedial provisions and involved facts and circumstances unique to the litigants, aspects of the decision may provide useful guidance outside of the State of California.

Under the first prong of our analysis, we find that the State has made meaningful concessions. It has secured a zone of substantial gaming exclusivity in which the Tribe can offer its gaming patrons live table games.

Under the second prong of our analysis, we find that these concessions provide a substantial economic benefit to the Tribe that justifies the revenue shared by the Tribe. The Tribe has demonstrated that the exclusivity it has secured will allow it to grow its existing class III gaming operations and generate additional revenues for its government. The Tribe has also shown that, while expansion of non-tribal gaming beyond existing locations may detrimentally impact its gaming revenues, the Compact provides that it will no longer be required to continue making revenue sharing payments to the State if such an expansion occurs.

Thus, we conclude that the State has made meaningful concessions that offer the Tribe substantial economic benefits justifying the revenue sharing payments required.

B. Permissible Subjects of Compact Negotiation

The IGRA established a statutory scheme that limited tribal gaming and sought to balance tribal, state, and Federal interests in regulating gaming activities on Indian lands.

To ensure an appropriate balance between tribal and state interests, Congress limited the subjects over which tribes and states could negotiate a class III gaming compact. Pursuant to IGRA, a tribal-state compact may include provisions relating to:

- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing;

and

- (vii) any other subjects that are *directly related to the operation of gaming activities*.

25 U.S.C. § 2710(d)(3)(c) (emphasis added).

Congress included the tribal-state compact provisions to account for states' interests in the regulation and conduct of class III gaming activities, as defined by IGRA.⁴ Those provisions limited the subjects over which states and tribes could negotiate a tribal-state compact. 25 U.S.C. § 2710(d)(3)(c). In doing so, Congress also sought to establish "boundaries to restrain aggression by powerful states." *Rincon Band* (citing S. Rep. No. 100-446, at 33 (1988) (statement of Sen. John McCain)). The legislative history of IGRA indicates that "compacts [should not] be used as subterfuge for imposing state jurisdiction on tribal lands." *See*, Committee Report for IGRA, S. Rep. 100-446 at 14.

We conduct our review of tribal-state gaming compacts against this backdrop. Tribal governments are vested with the inherent authority to regulate gaming activities on their own lands, where such lands are located within a state that permits the conduct of gaming, and the scope of a state's regulatory interest in these activities is limited, and was prescribed by Congress through IGRA. Therefore, we must view the scope of prescribed state regulatory authority over tribal gaming activities narrowly.

When we review a tribal-state compact or amendment submitted under IGRA, we look to whether the provisions fall within the scope of categories prescribed at 25 U.S.C. § 2710(d)(3)(c). One of the most challenging aspects of this review is determining whether a particular provision adheres to the "catch-all" category at § 2710(d)(3)(c)(vii): "...subjects that are directly related to the operation of gaming activities."

In the context of applying the "catch-all" category, we do not simply ask, "but for the existence of the Tribe's class III gaming operation, would the particular subject regulated under a compact provision exist?" Instead, we must look to whether the regulated activity has a direct connection to the Tribe's conduct of class III gaming activities.

In other circumstances, the Department would question the propriety of § 7 of the Compact. In this instance, however, the Department recognizes that § 7 was included in the Tribe's previous compact with the State through an amendment approved by the Department in 2000. This provision has been in effect for more than 10 years as part of the existing compact between the Tribe and the State, and we are informed that the tribal ordinance addressed in Section 7 has been in effect for nearly the same number of years.⁵ Additionally, while Section 7 requires three

⁴ 25 U.S.C. § 2708.

⁵ "Upon its approval by the Department [in 2000], the Tribe fulfilled all of its commitments under [Section 7] to institute the comprehensive study and enact the ordinances described. Therefore, the State does not view this provision in the proposed new Compact as creating any new commitment on the part of the Tribe and has no expectations of any further action by the Tribe with regards to [Section 7]." Letter from Mark Davis, General Counsel to the Governor of the State of North Carolina, to Paula Hart, Director of the Office of Indian Gaming at the Department of the Interior (August 1, 2012).

Tribe to enact an ordinance involving matters which are not directly related to gaming activities, the specific content and enforcement mechanisms for the ordinance are left to the discretion of the Tribe.

Only the supplemental information submitted by the Tribe and the State, combined with our narrow construction of Section 7, prevented us from finding that the Compact violated IGRA's provisions regarding the permissible scope of compact negotiations and disapproving the Compact. In implementing this Compact, we caution the parties to avoid applying these provisions in a manner that does not directly relate to the operation of gaming activities, as doing so would violate the provisions of IGRA limiting the scope of tribal-state gaming compacts.

Conclusion

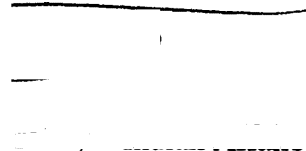
We have completed our review of the Compact, along with additional materials submitted by the Tribe and the State, and have determined that the Compact does not violate the Indian Gaming Regulatory Act. Therefore, pursuant to 25 U.S.C. § 2710(d)(8)(C), I have decided to approve the Compact. We wish the Tribe continued success in its venture.

A similar letter has been sent to the Honorable Beverly Perdue, Governor of the State of North Carolina.

Sincerely,



Michael S. Blum
Acting Assistant Secretary



**FIRST AMENDED & RESTATED
TRIBAL - STATE COMPACT
BETWEEN THE EASTERN BAND OF CHEROKEE INDIANS
AND THE STATE OF NORTH CAROLINA**

THIS FIRST AMENDED & RESTATED TRIBAL - STATE COMPACT made and entered into this the 28th day of November, 2011, by and between the **EASTERN BAND OF CHEROKEE INDIANS**, a federally recognized Indian tribe acting through its Principal Chief, the Honorable Michell Hicks, and the **STATE OF NORTH CAROLINA**, acting through its Governor, the Honorable Beverly Eaves Perdue;

W I T N E S S E T H:

WHEREAS, the Eastern Band of Cherokee Indians is a federally recognized Indian tribe, possessed of all sovereign powers and rights thereto pertaining;

WHEREAS, the State of North Carolina is a sovereign state of the United States of America with all rights and powers thereto pertaining;

WHEREAS, the Congress of the United States has enacted into law the Indian Gaming Regulatory Act, P.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 set forth the rules, regulations and conditions under which an individual Tribe may conduct Class III gaming, as defined in the Act, on Indian lands within a state permitting gaming;

WHEREAS, the State of North Carolina seeks to generate funds to strengthen its schools, to create jobs, and to promote economic development;

WHEREAS, the Eastern Band of Cherokee Indians and the State of North Carolina have mutually agreed to the terms and conditions under which Class III gaming may be conducted on Eastern Cherokee Lands; and

WHEREAS, the Eastern Band of Cherokee Indians and the State of North Carolina have mutually agreed that the conduct of Class III gaming under the terms and conditions set forth below will benefit the Eastern Band of Cherokee Indians and protect the citizens of the Eastern Band of Cherokee Indians and the State of North Carolina, consistent with the objectives of the Indian Gaming Regulatory Act;

NOW, THEREFORE, THE EASTERN BAND OF CHEROKEE INDIANS AND THE STATE OF NORTH CAROLINA do enter into this First Amended & Restated Tribal - State Compact as provided for herein.

Section 1. **TITLE.** This document shall be cited as “The Eastern Band of Cherokee Indians – State of North Carolina Gaming Compact.”

Section 2. **DECLARATION OF POLICIES AND PURPOSES.** The purposes of this Compact are:

- (A) To authorize the operation of Class III gaming by the Eastern Band of Cherokee Indians on Eastern Cherokee Lands as a means of promoting tribal economic development, self-sufficiency, and strong tribal government;
- (B) To provide for the regulation of Class III gaming by the Eastern Band of Cherokee Indians and the State of North Carolina to protect against organized crime and other corrupting influences, to assure that Class III gaming is conducted fairly and honestly by both the Eastern Band of Cherokee Indians and the participants and to ensure that the Eastern Band of Cherokee Indians is the primary beneficiary of the Class III gaming operation;
- (C) To fulfill the purpose and intent of the Indian Gaming Regulatory Act by providing for Class III gaming by an Indian tribe on Eastern Cherokee Lands as a means of generating tribal revenues; and
- (D) To enable the State of North Carolina to generate funds to strengthen its schools, to create jobs, and to promote economic development.

Section 3. **DEFINITIONS.** For purposes of this Compact:

- (A) “Act” means the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. 2701 et seq.
- (B) “Agreement” means the Tribal-State Compact herein.
- (C) “Certification Commission” means that independent body established under the authority of the Tribal-State Compact to certify and approve video games as meeting the requirement and standards for games involving the use of skill or dexterity as allowed under NCGS §14-306 and §14-306.1A and to provide oversight for all forms of gaming being conducted under the Tribal-State Compact as described herein.
- (D) “Charter School” means a nonprofit corporation that has a charter under NCGS 115C-238.29D to operate a charter school.
- (E) “Class II Gaming” means all forms of gaming as defined in 25 U.S.C. 2703(7) and as interpreted by the National Indian Gaming Commission (NIGC).
- (F) “Class III Gaming” means all forms of gaming that are not Class I gaming or Class II gaming, as defined in 25 U.S.C. 2703(6), (7) and (8).
- (G) “Commission” (also referred to as the “Tribal Gaming Commission”) means the Tribal Gaming Regulatory Agency responsible for the effective regulation of all gaming activities on Eastern Cherokee Lands.

- (H) “Compact” means this First Amended & Restated Tribal–State Compact between the Eastern Band of Cherokee Indians and the State of North Carolina.
- (I) “Coupon” means an offer having a defined value issued by the Tribe and redeemed by a player at a Live Table Game.
- (J) “Eastern Cherokee Lands” means all tribal trust lands within the Cherokee Indian Reservation located in Jackson, Swain, Haywood, Graham and Cherokee counties and all lands within these counties which may be acquired in trust by the Eastern Band of Cherokee Indians in the future which meet the requirements of Section 20 of the Act, 25 U.S.C. Section 2719.
- (K) “Execution Date” means the date when this Compact was executed both by the Principal Chief and the Governor.
- (L) “Free Play” has the same meaning as Coupon.
- (M) “Governor” means the top elected executive official for the State of North Carolina as set forth in Article III of the North Carolina State Constitution.
- (N) “Gross Revenue” means the amount remaining after deducting all gaming losses from amounts won.
- (O) “Gross Revenue From Live Table Gaming” means the total wagers, less prizes and promotional monies, from all Live Table Gaming authorized by this Compact.
- (P) “Indian Gaming” means gaming as regulated under the Act.
- (Q) “Live Table Gaming” (or “Live Table Games”) means games that utilize real (non-electronic) cards, dice, chips and equipment in the play and operation of the game.
- (R) “Local School Administrative Unit” means the separate school districts located in the State of North Carolina.
- (S) “National Indian Gaming Commission” (NIGC) means the Federal Government Agency that was created under the Act to perform oversight of Indian Gaming throughout the United States.
- (T) “Other Electronic Gaming” means any electronic game or amusement device other than video gaming that allows a player to play a game of amusement.
- (U) “Parties” means the Eastern Band of Cherokee Indians and the State of North Carolina.
- (V) “Principal Chief” means the top elected executive official for the Eastern Band of Cherokee Indians.

- (V.1) “Prize” means a cash award given to a player for a favorable outcome from placing a wager.
- (W) “Promotional Monies” means Coupons or Free Play given to players to utilize in the play of Live Table Gaming.
- (X) “Proprietary Progressives” means a group of machines that are owned and operated by the Tribe in the facilities owned and operated by the Tribe on Eastern Cherokee Lands linked together by a network.
- (Y) “Raffles” means games in which a cash prize with a value of not more than \$50,000 or a merchandise prize with a value of not more than \$50,000 is won by the random selection of the name or number of one or more persons who have entries in the game.
- (Z) “State” means the State of North Carolina, its authorized officials, agents and representatives.
- (AA) “Tribal Council” means the elected legislative body for the Eastern Band of Cherokee Indians.
- (BB) “Tribal Gaming Commission” (also referred to as the “Commission”) means the Tribal Gaming Regulatory Agency responsible for the effective regulation of all gaming activities on Eastern Cherokee Lands.
- (CC) “Tribe” means the Eastern Band of Cherokee Indians, its authorized officials, agents and representatives.
- (DD) “Video Game” means any electronic video game or amusement device that allows a player to play a game of amusement involving the use of skill or dexterity as allowed under N.C.G.S. §14-306 and §14-306.1A or as subsequently amended by the North Carolina General Assembly.

Section 4. **AUTHORIZED CLASS III GAMING.** The Tribe has the right to license and regulate gaming activity on Eastern Cherokee Lands in accordance with the Act and this Compact.

- (A) Subject to the conditions set forth in this Compact, and in accordance with the Act, the Tribe may conduct any or all of the following on Eastern Cherokee Lands:
- (1) Raffles as defined in Section 3.
 - (2) Video Games as defined in Section 3.
 - (3) Except as prohibited herein, all Class III gaming activities as defined by the Act and that are customary in other gaming jurisdictions in the United States as of the Execution Date, including, without limitation, Live Table Gaming on Eastern Cherokee Lands.

- (4) Such other Class III gaming which may be authorized pursuant to Section 4(B) of this Compact.
- (B) The Tribe may apply to the State for authorization to conduct Class III gaming not expressly enumerated in Section 4(A) of this Compact.
- (1) The application shall be submitted in writing by the Principal Chief to the Governor and shall identify with specificity the additional proposed gaming activities and any proposed amendments to the Tribe's regulatory ordinances.
 - (2) The Governor shall take written action on the Tribe's application within one hundred and eighty (180) days after receipt. The Governor's action shall be based on:
 - a. whether the proposed gaming activities are permitted for the Tribe on Eastern Cherokee Lands by the laws of the State of North Carolina consistent with the Act; and
 - b. whether the existing or proposed regulatory controls and criminal sanctions are adequate to fulfill the policies and purposes set forth in this Compact.
 - (3) Any gaming activity approved in writing by the Governor and the Tribe shall be incorporated into and deemed a part of this Compact.

Section 4.1. EXCLUSIVITY AND REVENUE SHARING PROVISION.

The Parties to this Compact fully affirm their mutual desire to enter into a mutually beneficial agreement and acknowledge the substantial benefits gained from the sharing of the following benefits given by both Parties. Both Parties acknowledge the federal law prohibition against taxation of Indian Gaming by a State and hereby affirm the following agreement is not taxation but instead a mutually agreed upon benefit to the Parties.

- (A) In consideration of the substantial revenue sharing covenants by the Tribe in Section 4.1(B), the State grants the Tribe exclusivity for conducting its Live Table Gaming in a geographical zone encompassing all areas within the State of North Carolina west of Interstate Highway I-26, in its location as of the Execution Date.
- (B) In consideration of the substantial exclusivity covenanted by the State as set forth in Section 4.1(A), the Tribe shall make certain monthly payments in accordance with this Section 4.1(B).
 - (1) Every month, the Tribe shall make a contribution to all Local School Administrative Units and Charter schools within the State of North Carolina on an average daily

membership basis, the amount of which shall be calculated in accordance with the formula below, to be spent solely for the purpose of educating children in the classroom (the “Monthly Payment”). The amount of the Monthly Payment shall be calculated by taking the following percentages of Gross Revenue from Live Table Gaming:

FOUR PERCENT (4%) for the first five years of the Compact;
FIVE PERCENT (5%) for the next five years of the Compact;
SIX PERCENT (6%) for the next five years of the Compact;
SEVEN PERCENT (7%) for the next five years of the Compact; and
EIGHT PERCENT (8%) for the next ten years of the Compact.

- (2) For each new Class III gaming facility operated by the Tribe, the Tribe and the Governor shall agree to a revenue sharing agreement not to exceed **EIGHT PERCENT (8%)** of Gross Revenue From Live Table Gaming prior to the opening of any new gaming facility and such agreement shall not be unreasonably withheld by the Governor but negotiations between the Parties must be concluded within 90 days of the Governor receiving written notification from the Tribe of its intent to operate a new gaming facility. However, no such new gaming facility shall be opened until an agreement has been reached.
- (3) The amount of revenue to which the State is entitled pursuant to Section 4.1(B) shall be calculated by the Tribe on a monthly basis, and shall be remitted in accordance with the provisions of Section 4.1(B)(4) no later than the 21st day of the month following the month in which the right to the revenue accrued.
- (4) The Tribe shall remit the Monthly Payment to the existing Cherokee Preservation Foundation (which shall act solely as a fiscal agent). The Cherokee Preservation Foundation shall transmit the Monthly Payment electronically to an irrevocable trust fund at the Department of Public Instruction, as directed by the Governor, to ultimately be distributed to Local School Administrative Units and Charter Schools within the State of North Carolina for the sole purpose of educating children in the classroom. The State shall not consider said revenue as “State revenue” as that term is currently defined by N.C.G.S. 143-C-1-1(d)(27). If, for any reason, the irrevocable trust fund does not receive a Monthly Payment by the 25th day of the month following the month in which the right to the revenue accrued, the Tribe shall remit an amount equal to the amount of the Monthly Payment directly to the irrevocable trust fund.
- (5) If, after the revised Compact is approved by the United States Department of Interior, State law changes or is interpreted in a final judgment of a court of competent jurisdiction or in a final order of a State administrative agency to permit either a person or entity other than the Tribe to conduct Live Table Gaming within the area of exclusivity granted to the Tribe in Section 4.1(A), all revenue sharing as set out above in Sections (B)(1), (2), and (3) with the State shall cease immediately.

Section 5. REGULATION OF CLASS III GAMING.

(A) The following regulatory requirements shall apply to the conduct of Class III gaming authorized by this Compact. The Tribe shall maintain as part of its lawfully enacted ordinances, at all times in which it conducts any authorized Class III gaming, requirements at least as restrictive as those set forth herein.

- (1) The Tribe may not hire, employ or enter into a contract for services relating to Class III gaming with any person or any entity which employs a person in connection with Class III gaming who:
 - a. Is under the age of 21; provided, however, that for jobs that do not require the employee to serve alcohol or have any involvement with any gaming activity, the Tribe may employ persons who are less than 21 years of age for non-gaming and non-alcohol related employment.
 - b. Has, within the ten years immediately preceding the commencement of the person's employment, been convicted of or entered a plea of guilty or no contest to: a felony, any gambling-related offense, fraud or misrepresentation or any violation of Subchapter XI of Chapter 14 of the North Carolina General Statutes, unless the person has been pardoned.
 - c. Is currently charged with any offense set forth in Section 5(A)(1)(b) above, which has not yet reached final disposition.
- (2) The Tribe shall publish the odds and prize structure of each Class III game, which publication shall be prominently displayed on every game.
- (3) The Tribe shall maintain the following records for a period of five years.
 - a. Revenues, expenses, assets, liabilities and equity for the location(s) at which the Tribe conducts Class III Gaming;
 - b. Daily cash transactions for each game at the location at which the Tribe conducts Class III gaming;
 - c. Individual and statistical game records for all games;
 - d. Records of all tribal enforcement activities;
 - e. All audits prepared by or on behalf of the Tribe;
 - f. Contracts, correspondence and other transaction documents relating to all vendors and contractors;
 - g. Personnel information of all Class III gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks;
 - h. Records of all Promotional Monies and Prizes; and
 - i. Records of all Gross Revenue from Live Table Gaming
- (4) The Tribe shall maintain all accounting records on a double entry system of accounting, and shall maintain detailed, supporting, subsidiary records.

- (5) All personnel employed by the Tribe whose responsibilities include the operation or management of Class III games shall be licensed by the Tribe. The Tribe shall publish and maintain a procedural manual for such personnel, which shall include disciplinary standards for breach of the procedures.
- (6) No person under the age of 21 may purchase a gaming ticket or otherwise participate in any Class III game.
- (7) Except for employees under the age of 21 that are specified in Section 5(A)(1)(a), no person under the age of 21 shall be permitted in the gaming area of the gaming facility where any component of Class III gaming is conducted; provided, however, that this subsection shall not apply to locations at which sales of gaming tickets is the only component of Class III gaming.
- (8) If any person below the age of 21 plays and otherwise qualifies to win any Class III game, the prize shall not be paid, and the estimated amount wagered during the course of the game shall be returned to the minor.
- (9) The Tribe shall not knowingly permit any person who manages or is employed by a Tribal gaming facility, regulatory agency, or gaming machine vendor, to participate in any Class III gaming or to collect any prize.
- (10) The Tribe shall not conduct or possess any Class III games or components thereof outside of the Eastern Cherokee Lands except when transporting such games to or from the manufacturer, a certified testing laboratory, or to a certified repair facility. This prohibition shall include the use of common carriers (such as telecommunications, postal or delivery services) for the purpose of sale of a gaming ticket or playing card to, or placement of a wager by, a person who is not physically present on Eastern Cherokee Lands to purchase the gaming ticket or card or place the wager. This prohibition shall not apply to the use of technology which shall permit the Tribe to conduct Proprietary Progressives. If the United States Congress passes a law permitting on-line gaming, then the parties, at the Tribe's election, shall enter into discussions regarding the effect of the change in federal law on the ability of the Tribe to engage in on-line gaming.
- (11) The Tribe shall not extend credit to gaming customers for amounts less than One Thousand Dollars (\$1,000). The Tribe may extend credit to gaming customers in amounts of one thousand Dollars (\$1,000) or greater if the Tribe adopts and maintains internal control procedures that are at least as stringent as those promulgated by the National Indian Gaming Commission at 25 CFR 542.15. Additionally, the Tribe may utilize cash machines (ATM machines) operated by a federal or state regulated and licensed bank or lending institution or cash advance system when the cash advance is from a preexisting credit line established on a credit card issued from a federal or state regulated and licensed bank.

- (12) At least once per year, the Tribe shall engage an independent certified public accountant to audit the books and records of all Class III gaming conducted pursuant to this Compact and shall provide copies of the audit sections for Live Table Gaming revenues, which shall include a detailed accounting of all Promotional Monies, Coupons, Free Play and Prizes awarded during the audit period, and copies of all current internal accounting and audit procedures to the North Carolina Attorney General and the Governor's General Counsel within 30 days of Tribe's receipt of the final audit report. The Tribe shall permit the State to consult with the auditors before or after any audits or periodic checks on procedures which may be conducted by the auditors, and shall allow the State to submit written or oral comments or suggestions for improvements regarding the accounting and audit procedures. Within 30 days of receipt of any written or oral comments, the Tribe shall: (a) accept the comments and modify the procedures accordingly; or (b) respond to the comments with counter-proposals or amendments. The State shall pay for any additional work performed by the auditors at the request of the State.
- (13) Background investigations. The Tribe, prior to placing a prospective employee whose responsibilities include the operation or management of Class III games or child care services, shall conduct a background investigation in accordance with the Tribe's gaming ordinance and in compliance with the Act and pertinent regulations promulgated by the National Indian Gaming Commission (NIGC) consistent with the Memorandum of Understanding between the NIGC and the Eastern Band executed by the Tribe on January 31, 1994. If employed, each person whose responsibilities include the operation or management of Class III games shall be subject to such periodic review as may be required by the NIGC and appropriate tribal and federal regulations applicable thereto. Employees found to have been convicted of any violation described in Section 5(A)(1)(b) or who are currently charged with any offense set forth in Section 5(A)(1)(b) shall not be permitted to continue their employment. The State may submit information or objections to the Tribe, which must be considered by the Tribe concerning any entity or person applying for a license from the Tribe. The Tribe shall respond to the State's information or objections, in writing, prior to making a final decision on the granting of any license to any entity or person.
- (14) Patron Dispute Resolution. The Tribe shall maintain a patron dispute resolution procedure. At a minimum, this procedure must provide the following:
- Any person who has any dispute, disagreement or other grievance with a Tribal gaming operation that involves currency, tokens, coins, or any other thing of value, may seek resolution of such dispute from the following persons and in the following order:
- a. A member of the staff of the gaming operation;

- b. A supervisor in the area of the relevant gaming operation in which the dispute arose;
- c. A manager in the area of the relevant gaming operation in which the dispute arose;
- d. A director in the area of the relevant gaming operation in which the dispute arose;
- e. A vice-president in the area of the relevant gaming operation in which the dispute arose;
- f. The general manager of the relevant gaming operation; and
- g. The Commission.

Patron rights regarding disputes:

When a person brings a dispute for resolution by the Commission, the complainant has the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegations. At each level, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level. Resolution of any dispute by the personnel of a gaming operation shall always involve two or more staff members. All disputes, whether resolved or not, shall be reported in detail by the staff persons involved to their supervisor, or, in the case of the general manager of the gaming operation, to the Commission.

Gaming Commission action on patron disputes:

Patrons who have complaints against the gaming facility, a gaming employee, or a management contractor shall have as their final remedy the right to file a petition for relief with the Commission. Any patron complaint must be submitted to the Commission within 30 days after exhaustion of all management review options. Complaints shall be submitted in writing, and at the discretion of the Commission, the patron may be allowed to present evidence. The Commission may hold a hearing within 30 days of receipt of petitioner's complaint and the patron may have counsel present at such hearing. The decision of the Commission shall be in writing, shall be issued within 14 days of submission of the matter to the Commission, and shall be provided to the general manager of the gaming operation and to the complainant.

- (15) **Problem Gambling and Youth Gambling.** The Tribe shall prohibit any and all forms of advertising targeting or enticing underage gambling. The Tribe will continue to require that all casino employees receive mandatory training in identifying minors, procedures to verify individuals' age via proper identification, and methods to detect potentially invalid identification. The Tribe will maintain procedures and policies to fine any gaming facility which has permitted underage gambling to occur. Additionally, the Tribe shall maintain its existing programs, provided through Harrah's Cherokee Casino, which address gambling addiction

and promote responsible gaming. The Tribe shall provide similar programs at any new gaming facilities of the Tribe. These programs include mandatory training for all casino employees to identify possible gambling addiction behavior in patrons, the posting of responsible gaming signage and gambling helpline phone numbers.

- (16) Wager/Bet Limits. For all gaming activities, the Tribe shall set forth in clear concise language the games wager/bet limits in both the minimum and maximum wager/bet amounts. These limits shall be established within the standard industry parameters of the market in order to maintain a competitive product for the game being conducted and shall be enforced throughout each gaming facility. Any deviation from these wager/bet limits shall be prohibited under the internal control procedures of the Tribe.
- (B) The regulatory requirements set forth in Section 5(A) of this Compact shall be administered and enforced as follows:
- (1) The Tribe shall have primary responsibility to administer and enforce the regulatory requirements set forth in Section 5(A).
 - (2) The State and Compliance Committee shall have the right to monitor the Tribe's Class III gaming to ensure that the Tribe is administering and enforcing the regulatory requirements set forth herein. The State and Compliance Committee shall have the right to inspect all premises on which Class III gaming is conducted and the right to inspect and copy all tribal records relating to Class III gaming.
 - (3) The Tribe shall have the right to inspect and copy State records available under the North Carolina Public Records laws concerning all Class III gaming of the Tribe.
 - (4) In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 11 of this Compact.
- (C) The Tribe shall own and operate all Class III games located on the Eastern Cherokee Lands. However, nothing herein shall prohibit the Tribe from entering into a management agreement in accordance with the Act, or leasing agreements with the owners of intellectual property on specific game types.
- (D) Subject to the provisions of Section 4.1(B)(2) of this Compact, the Tribe may legally operate unlimited Class III gaming facilities on Eastern Cherokee Lands. All tribal gaming facilities shall meet all North Carolina standards for construction, fire and safety. When planning to open a new gaming facility, the Tribe shall notify the County Manager of the county in which the new facility will be opened in writing that a new facility shall be opened on Eastern Cherokee Lands that are located in that county. The written

notification shall include the specific location/address of the facility to be opened. This requirement is for notifications only and does not impinge on the sovereign decisions of the Tribe in the placement of businesses on its own property or create any rights to the County governments in relation to the Tribe's sovereign decisions.

- (E) No Class III game may be played by a player who uses a credit card rather than currency or coin to participate in the game. However, nothing herein prohibits the use of credit card cash advance systems or extension of credit as provided for in section 5(A)(11) of this Compact.

Section 6. **REGULATION OF GAMING ACTIVITY.**

- (A) **Regulation of Video Games** - defined by Section 3(DD) of this Amended & Restated Compact

- (1) The Tribe shall purchase video game equipment only from a distributor or manufacturer. All such equipment must be certified by an independent testing laboratory. All video game equipment owned and operated by the Tribe shall include an internal computerized accounting system which shall be monitored by the Tribe and/or its independent certified public accountant firm through on-line computer terminals.

- (2) **Non-Complying Video Games.** The following are declared to be non-complying video games:

- a. All video games to which agents of the State have been denied access for inspection purposes.
- b. All video games operated in violation of this compact.
- c. Any video game not certified by the Certification Commission.

Any game deemed to be out of compliance by the State (not the Certification Commission) shall be inspected by an independent gaming test laboratory as provided below within three days of receipt of notice of non-compliance. If the independent laboratory finds that the video game or related equipment is non-complying, the non-complying equipment shall be permanently removed from play unless modified to meet the requirements of this Compact. Video games and related equipment removed from play and modified pursuant to this section may be returned to play only after inspection by the State, under the guidance of the Certification Commission and an independent gaming test laboratory.

- (3) **Testing and Approval of Video Games.** No video game may be purchased, leased or otherwise acquired by the Tribe unless the video game, or a prototype thereof, has been tested and approved or certified by the Certification Commission and a

gaming test laboratory as meeting the requirements and standards of this Compact as allowed under NCGS 14- 306 and 14-306.1A or as subsequently amended by the North Carolina General Assembly. For purposes of this Compact, a gaming test laboratory is a laboratory agreed to and designated in writing by the State and the Tribe as competent and qualified to conduct scientific tests and evaluations of video games and related equipment.

- (4) Application for Approval of Prototype Video Games. If requested by the gaming test laboratory, the Tribe shall provide or require that the manufacturer provide to the independent gaming test laboratory two copies of video game illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format) and any other information requested by the gaming test laboratory.
- (5) Testing of Video Games. If required by the independent gaming test laboratory, the Tribe shall require the manufacturer to transport not more than two working models of the video game and related equipment to a location designated by the laboratory for testing, examination and analysis. The Tribe shall require the manufacturer to pay for any and all costs for the transportation, testing, examination, and analysis. The testing, examination and analysis may include the entire dismantling of the video games and related equipment and some tests may result in damage or destruction to one or more electronic components of the devices. If required by the laboratory, the Tribe must require the manufacturer to provide specialized equipment or services of an independent expert to assist with the testing, examination and analysis.
- (6) Report of Test Results. At the conclusion of each test, the laboratory shall provide to the State and the Tribe a report that contains the findings, conclusions and a determination that the video game and related equipment conforms or fails to conform to the technical requirements and standards set forth in this Compact. If modifications can be made which would bring the video game or related equipment into compliance, the report may contain recommendations for such modifications.
- (7) Modifications of Approved Video Games. The manufacturer or distributor shall provide all video games and related equipment in a manner approved and licensed by the Tribe. No modification to the assembly or operational functions of any video game or related equipment may be made after testing and installation unless the Certification Commission and an independent gaming test laboratory certifies to the State and the Tribe that the modified video games conform to the standards of this Compact. All proposed modifications shall be described in a written request made to the State, the Certification Commission and an independent gaming test laboratory containing information describing the modification, the reason therefore and all documentation required by the laboratory. In emergency situations where modifications are necessary to prevent

cheating or malfunction, the laboratory may grant temporary certification of the modification for up to 15 days pending compliance with this section.

- (8) Conformity to Technical Standards. The Tribe shall require the manufacturer or distributor to certify, in writing, to the Tribe and to the State that, upon installation, each video game placed in a gaming facility within the Eastern Cherokee Lands: (1) conforms precisely to the exact specifications of the video game prototype tested and approved by the testing laboratory; and (2) operates and plays in accordance with the technical standards set forth in this Compact.
- (9) Prizes. Prizes may be awarded in the form of free games, credits, cash or merchandise. Seventy-five percent (75%) of the video gaming devices may not exceed the value of \$100,000 prize for each individual award. The remaining 25% of the video gaming devices may award prizes without limit in dollar amount.
- (10) Existing Video Games. Video games or prototypes thereof, operated within the Eastern Cherokee Lands after the effective date of this Compact must be tested and approved by the Certification Commission and an independent gaming test laboratory as required by this Compact. If the existing video games do not comply with the standards of this Compact they shall be brought into compliance prior to their use after the effective date of this Compact or replaced with complying equipment. In no event shall the Tribe knowingly permit non-complying games to be operated on Eastern Cherokee Lands.
- (11) Information to be provided. Prior to the installation of any video game acquired by the Tribe after the effective date of this Compact, and for any video game operated within Eastern Cherokee Lands on or before the effective date of this Compact, the Tribe shall provide, or require that the manufacturer or distributor provide to the State:
 - a. A list of all states in which the distributor or manufacturer from whom the video games were acquired is licensed, the license numbers (if license numbers are issued) and operative dates of the license(s); and
 - b. Identification numbers or codes for each video game placed on Eastern Cherokee Lands.
- (12) Hardware Requirements for Video Games. Video games operated within Eastern Cherokee Lands must be licensed by the Tribe to meet the following specifications:

- a. No Physical Hazard. Electrical and mechanical parts and design principles may not subject a player to any physical hazards.
- b. Surge Protectors. A surge protector device must be installed for all power which is fed to the device.
- c. Battery Back-up. A battery back-up, or an equivalent for the electronic meters must be capable of maintaining accurate reading for 180 days after power is discontinued from the device for all information regarding:
 - (1) current and total tallies of amounts wagered and paid out;
 - (2) records of access to the logic board component;
 - (3) records of access to the cash and coin component;
 - (4) such other data as may be required by written regulation of the Tribe.

The back-up device shall be located within the locked logic board compartment and shall not be accessible to the manufacturer or distributor after the initial installation of the equipment.

- d. Power Switch. A power switch must be located in an accessible place within the interior of the game which controls the electrical current used in the operation of the game.
- e. Resistance to Electromagnetic interference. The operation of the video game, including the coin drop and other such component parts, must not be adversely affected by static discharge, radio frequency interference or other electromagnetic interference.
- f. Approved Coin and Bill Acceptors. At least one electronic or mechanical coin acceptor may be installed in or on each video game. The devices may also contain bill acceptors for denominations determined by the Tribe. Prior to operation within Eastern Cherokee Lands, all models of coin and bill acceptors installed must have been tested and approved in writing by an independent gaming test laboratory as provided by this Compact.
- g. Secure Cabinets. The internal space of the video game shall not be readily accessible when the door is closed and sealed.
- h. Secure Electronic Components. Logic Boards and software, electronically programmable read only memory chips (hereinafter EPROMS), and other logic control components shall be located in a separate compartment within the video game and that compartment shall be locked with a different key or combination than that used for the main cabinet.

- i. Secure Cash Compartment. The coin and currency compartment shall be secured with a different key or combination than that used for the main cabinet door, except that a separate cash compartment shall not be required for coins necessary to pay prizes in a machine which pays prizes through a drop hopper.
- j. No Hardware Modification of Pay Tables or Payouts. No hardware switches (DIP Switches) may be installed which alter the pay tables or payout percentages for the game, unless the hardware switches are located within the secure electronic components (logic compartment) as defined in section 6(A)(12)(h) of this compact and the Cherokee Tribal Gaming Commission has sole custody of the key.
- k. Printed Record of Credits and Payouts Required. A single printing mechanism which must be capable of printing an original ticket and retaining an exact, legible copy, either within the game or in a management/reporting system approved by the independent gaming test laboratory, that provides permanent sequential tracking and which permits monitoring of error conditions on a printed medium for future use, and which records the following information: (a) the number of credits; (b) value of the credits in dollars and cents; (c) the cash paid by the device; and (d) any other data required by the Tribe. Video games utilizing coin drop hoppers are permitted, provided they are monitored by a management/reporting system of the type described in this paragraph which has been approved by an independent gaming test laboratory.
- l. Identification Plates Required. Each video game shall have an unremovable identification plate on the exterior of the cabinet, which contains the following information:
 - 1. Manufacturer
 - 2. Serial number;
 - 3. Model number;
 - 4. License stamp and number issued by the Tribe certifying compliance with the technical standards set forth in this Compact.
- m. Rules of Play and Possible Winnings Displayed. The rules of play for each game must be prominently displayed on the game screen or the cabinet face. The Tribe shall not permit the display of any rules of play, which are incomplete, confusing, or misleading. Each game must display the coins or credits wagered and the credits awarded for the occurrence of each possible winning combination based on the amount wagered. All information required by this section must be kept under glass or other transparent substance and at no time shall stickers or other

such materials be placed on the machine face, which obscure the rules of play or the operational features of the game.

- n. Security Tape for EPROMS. Upon installation, the Tribe shall affix or cause to be affixed to the EPROM of each video game a strip of security tape, capable of evidencing the removal of the EPROM if the EPROM is removed from the circuit board. The security tape shall be secured and available only to the authorized personnel of the Tribe. The Tribe shall maintain accurate and complete records of the identification number of each EPROM installed in each video game.
- o. No Credit Card Meters Permitted. No video game may be equipped with a device, which permits the player to use a credit card rather than currency or coin to activate the game.

(13) Software Requirements for Video games. Video games operated within the Eastern Cherokee Lands must meet the following software specifications.

- a. Software Requirements for percentage Payout. Each video game must meet the following minimum theoretical percentage pay out during the expected lifetime of the game. Each video game machine shall pay out a minimum of 83 percent or a maximum of 100 percent of the total amount wagered over the expected life of the machine, including replays. This standard is met when using a method of play which will provide the greatest return to the player.
- b. Software Requirements for Continuation of Game After Malfunction. Each video game must be capable of continuing the current game with all current game features after a game malfunction is cleared automatically or by an attendant.
- c. Software Requirements for Play Transaction Records. Each game shall maintain electronic accounting meters. Such meters shall be maintained at all times, whether or not the game is being supplied with external power. The following information must be recorded and stored on meters capable of maintaining totals no less than eight digits in length:
 - 1. Total number of coins inserted (the meter must count the total number of coins, or the equivalent value if a bill acceptor is used, which are inserted by players);
 - 2. Number of credits wagered;
 - 3. Number of credits won;
 - 4. Credits paid out by printed ticket voucher or cash paid by the device.

- d. The following information must be recorded and stored on meters capable of maintaining totals no less than six digits in length:
 - 1. Number of coins or credits wagered in the current game;
 - 2. Number of coins or credits wagered in the last complete, valid game; and
 - 3. Number of cumulative credits representing credits won and money inserted by a player but not collected, commonly referred to as the credit meter.

- e. No Automatic Clearing of Accounting Meters. No video game shall have a mechanism or program which will cause the electronic accounting meters to automatically clear. The electronic accounting meters may be cleared only after written records of the readings before and after the clearing process are taken by the Tribe, which shall also record the reason the meter was cleared.

(14) Amendments to Hardware and Software Requirements for Video Games. The technical standards set forth in the above sections shall govern the operation of video games unless amended pursuant to the appropriate provisions of this Compact.

(15) Certification Commission

- a. The Certification Commission shall be reformed and shall consist of three members, one of whom shall be appointed by the Principal Chief and two of whom shall be appointed by the Governor. The terms of any current member of the Certification Commission that pre-existed this Agreement is hereby terminated; notwithstanding, any such member who is otherwise eligible for reappointment may be appointed as a member of the Certification Commission created by this Agreement. One of the two members appointed by the Governor will serve as Chairman.

The appointments shall be made within thirty (30) days of the execution of this compact. All three members will have responsibility for testing and approving all video games sought to be offered by the Tribe at its gaming facilities for compliance with the skill and dexterity requirements set out in NCGS § 14-306 and § 14-306.1A (or in subsequent legislation enacted by the General Assembly). The two members appointed by the Governor shall have the responsibilities for regulatory oversight as set out in subsections (e)(f) and (g) below. The term of a member shall be five years. The Certification Commission members shall be individually compensated by the Tribe for their services at an annual salary between \$9,000- \$12,000 as approved by the Tribal Council. The Parties agree to assess the appropriateness of said annual salary on the first anniversary of the Effective Date of this Agreement.

- b. The Certification Commission shall also have responsibility for testing and approving of all video games sought to be offered by the Tribe at its gaming facilities for compliance with the skill and dexterity requirements set out in NCGS § 14-306 and § 14-306.1A (or in subsequent legislation enacted by the General Assembly). The Certification Commission shall hold meetings on an annual basis, if needed, to engage in the testing and approval process of video games hereunder.
- c. The Certification Commission shall be provided adequate meeting space on a quarterly basis to perform its duties as set out herein.
- d. The Certification Commission shall have the authority to retain independent legal counsel to advise it on legal issues and matters presented to the Commission on an as needed basis with the compensation for such services to be paid by the Tribal Council.
- e. The members of the Certification Commission appointed by the Governor shall be identified as the “Compliance Committee” and shall be entitled to all rights and privileges as if acting as the Certification Commission.
- f. The Compliance Committee shall hold a quarterly meeting to receive reports on the following matters:
 - 1. The Tribe shall provide a written report to the Compliance Committee of every new game offered (of any type or category) in its gaming facilities. Said report shall include, at a minimum, the name of the game, a description of the game, the rules of the game, and the game’s odds.
 - 2. The Tribe shall also provide the Compliance Committee with prompt written documentation relating to the following:
 - (a) amendments to any policies or procedures involving gambling addiction, patron disputes, or other subjects encompassed by the Tribe’s gaming activities;
 - (b) any patron disputes that are unresolved;
 - (c) a listing of all Class III gaming employees who have passed a background investigation and been placed in employment and a list of all employees who have left employment. Background checks are kept on file and the Compliance Committee may request to review any background file;
 - (d) plans to build new gaming facilities on Eastern Cherokee lands; and
 - (e) any other documents directly related to regulatory oversight to which the Compliance Committee has notified the Tribe that it desires.

- g. If the Compliance Committee suspects a violation of this Compact is occurring, it shall seek information from the Cherokee Tribal Gaming Commission and allow thirty (30) days to respond and cure the defect. If the violation is of a continuing nature the provisions under Section 11 of this Compact shall be followed by the Compliance Committee.

Notwithstanding the provisions of this Section, the State shall retain all rights and remedies available to it under both existing law and created by this Agreement.

(B) Regulation of Raffles

- (1) Raffles shall consist of a game in which a cash or merchandise prize is won by the random drawing of the name or number of one or more persons who have entries in the game.
- (2) In no event shall the prize limit for a raffle game exceed the value of \$50,000 in cash or merchandise.
- (3) Electronic versions of raffles which comply with the statutory definition of raffles in NCGS 14-309.15(b) shall be permitted and may be conducted by the Tribe, its agents or employees if played and operated within the Tribe's facility, provided that the Tribe shall first receive the Tribal Gaming Commission's game approval as well as Gaming Laboratories International certification prior to placing any game into operation.
- (4) All employees must be properly trained to operate the games. This training is primarily for protection of patrons and Tribal assets but this training must also include instruction on how to spot and watch out for any patrons who may be having problem gambling issues. The employee must be trained in proper protocol on alerting supervisors to their observations and getting proper assistance to the customer.

(C) Regulation of Other Electronic Gaming Machines

- (1) The regulations for operating Class III Electronic Gaming Machines other than the machines previously listed shall be in accordance with the regulations found at 25 CFR 542.13. These regulations in their current form are made part of this First Amended & Restated Compact.
- (2) The NIGC regulations found at 25 CFR 542.13 shall be the minimum internal control standards for electronic gaming machines and the Tribe shall adopt Internal Control Procedures at least as stringent as those listed therein.

- (3) Electronic gaming machines must receive approval and certification by the Tribal Gaming Commission as well as Gaming Laboratories International certification prior to being placed into operation.
- (4) All employees must be properly trained to operate the games. This training is primarily for protection of patrons and Tribal assets but this training must also include instruction on how to spot and watch out for any patrons who may be having problem gambling issues. The employee must be trained in proper protocol on alerting supervisors to their observations and getting proper assistance to the customer.

(D) Regulation of Live Table Gaming

- (1) The regulations for operating live table gaming shall be in accordance with the regulations found at 25 CFR 542.12. These regulations are made part of this First Amended & Restated Compact.
- (2) The NIGC regulations found at 25 CFR 542.12 shall be the minimum internal control standards for live table gaming and the Tribe shall adopt Internal Control Procedures at least as stringent as those listed herein.
- (3) All equipment utilized in the conduct of live table gaming must receive approval and certification from the Tribal Gaming Commission prior to being placed into operation
- (4) All employees must be properly trained to operate the games. This training is primarily for protection of patrons and Tribal assets but this training must also include instruction on how to spot and watch out for any patrons who may be having problem gambling issues. The employee must be trained in proper protocol on alerting supervisors to their observations and getting proper assistance to the customer.

Section 7. HOTELS AND PLANNING ORDINANCES.

The Tribal Council shall institute, through its Planning Board, Sign Committee and other Council committees, in consultation with private and state resources, a comprehensive study which will result in drafting and enactment of ordinances and regulations designed to preserve the natural beauty of Cherokee trust lands, to protect, preserve and enhance the natural resources, environmental and aesthetic appearance of Cherokee tribal lands against long term degradation resulting from increased traffic and growth in connection with gaming activities, and to ensure continued quality development utilizing smart growth principles oriented toward the preservation and betterment of Cherokee trust lands. Such ordinances and regulations shall be enacted and in effect on or before two years from the effective date of this Compact amendment. Such ordinances and regulations may be amended as deemed necessary by the Tribe; provided, however, that the Tribe shall not alter any ordinance or

regulation if such action will substantively and adversely impact the purposes of these ordinances and regulations as set out hereinabove.

Section 8. CREATION OF FOUNDATION.

- (A) A non-profit foundation shall be established which shall be funded and endowed by the Tribe and shall operate under the name of CHEROKEE PRESERVATION FOUNDATION, whose purpose shall be to protect, preserve and enhance the natural resources, environmental and aesthetic appearance of Cherokee tribal lands against long term degradation resulting from increased traffic and growth in connection with gaming activities, assist in economic development for public services, recreation, entertainment and community economic development and foster employment opportunities on or near Cherokee tribal lands, provide funding for the purpose of preservation, research, study, restoration and development of the history, tradition, culture, language, arts, crafts and heritage of the Cherokee people.
- (B) The foundation shall be managed by a Board of twelve Directors who shall be appointed by the Governor. The Governor shall appoint the Chair of the Board from among the twelve members, and the Chair shall serve at the pleasure of the Governor. At least six of the twelve Directors shall be enrolled members of the Eastern Band of Cherokee. The Governor shall appoint to the Board those individuals filling the following positions.
- (1) Principal Chief of the Eastern Band of Cherokee Indians;
 - (2) Chair of the Tribal Council of the Eastern Band of Cherokee Indians;
 - (3) One county commissioner from one of the seven counties listed in paragraph (D) below;
 - (4) Two individuals who shall be enrolled members of the Eastern Band of Cherokee Indians selected from a list of six enrolled members nominated by the Principal Chief to the Governor for appointment;
 - (5) Two individuals chosen at large by the Governor from among the enrolled members of the Eastern Band of Cherokee Indians; and,
 - (6) Five individuals chosen at large by the Governor.

The Principal Chief and the Chair of the Tribal Council of the Eastern Band of Cherokee Indians shall serve during their term of elected office and have full voting rights on the foundation board. The other ten Directors shall serve staggered terms as follows:

- (1) The county commissioner Director shall serve four years and shall expire on each succeeding fourth anniversary of December 31, 2002. To be a Director, this appointee must continuously remain a county commissioner throughout the term. Should this appointee cease being a county commissioner at any time during his or her term as a Director, then by automatic operation of this provision he or she immediately shall cease to be a Director. If this appointee leaves the position of Director for any reason, then the Governor shall appoint a qualified replacement who shall complete the term of the departed Director.

- (2) The two Directors selected from a list of six enrolled members nominated by the Principal Chief to the Governor each shall serve four years and shall expire on each succeeding fourth anniversary of December 31, 2003. If one of these appointees leaves office for any reason, then the Principal Chief of the Eastern Band of Cherokee Indians shall submit to the Governor a list of three names of enrolled members of the Tribe and the Governor shall appoint one of the three nominees to complete the term of the departed Director.
 - (3) The two Directors chosen at large by the Governor from among the enrolled members of the Eastern Band of Cherokee Indians each shall serve four years and shall expire on each succeeding fourth anniversary of December 31, 2004. If one of these appointees leaves office for any reason, then the Governor shall appoint a replacement from among the enrolled members of the Eastern Band of Cherokee Indians to complete the term of the departed Director.
 - (4) The five individuals chosen at large by the Governor each shall serve four years and shall expire on each succeeding fourth anniversary of December 31, 2005. If one of these appointees leaves office for any reason, then the Governor shall appoint a replacement at large to complete the term of the departed Director.
- (C) The Tribe shall endow the foundation from additional funds realized by this Compact Amendment. The net gaming revenue realized by the Tribe during the fiscal year 2000 shall constitute the base net gaming revenue from which increased gaming revenue shall be calculated for purposes of funding the foundation. The Tribe shall fund the foundation in the amount of five million dollars per year for the first three years following final approval of the amended Compact. After the first three years, the Tribe shall fund the foundation at five million dollars per year or at a percentage equal to that percentage of net gaming revenue for the 2000 base year represented by five million dollars, whichever is greater, but in any event not more than seven and one-half million dollars. Nothing shall prohibit the Tribe from contributing additional principal to the foundation, nor shall the foundation be prohibited from seeking additional funds from other sources to support projects consistent with the purposes of the foundation. The Tribe shall continue to fund the foundation during the life of the Compact.
- (D) The foundation shall authorize and fund projects based upon a priority system approved by the Board of Directors including but not limited to projects promoting family and outdoor entertainment and sporting activities, projects promoting non-gaming economic development and projects enhancing, protecting and preserving the culture of the Tribe. Such projects may supplement and enhance but not replace existing tribal government budgeted projects. Such projects shall be located on or near Cherokee Tribal lands and in any of the following counties or any other county in which the Tribe may acquire tribal lands: Haywood, Jackson, Swain, Macon, Clay, Graham, and Cherokee. The Tribe shall have the right to present and recommend projects of the Board for consideration and funding.

- (E) The Cherokee Preservation Foundation has adopted Articles of Incorporation and By-Laws. Any inconsistencies between the Articles of Incorporation, the By-Laws, and this First Amended & Restated Compact shall be resolved in favor of the provisions as set out in this First Amended & Restated Compact.

Section 9. APPLICATION OF STATE LAWS.

- (A) State civil and criminal laws shall be applicable to and enforceable by the State against any person for activities relating to Class III gaming which occur outside of Eastern Cherokee Lands.
- (B) State criminal laws and regulatory requirements shall be applicable to and enforceable by the State against any person who is not a member of the Tribe for activities relating to Class III gaming which occur on tribal lands.
- (C) In order to administer and enforce state laws as set forth in Sections 9(A) and 9(B) of this Compact, the State may investigate the activities of tribal officers, employees, vendors or gaming participants who may affect the operation or administration of tribal gaming, and shall report suspected violations of state, tribal or federal laws to the appropriate state, tribal or federal prosecution authorities. Pursuant to such investigation, the State may seek subpoenas, in accordance with state law, to compel the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which are relevant or material to the investigation.
- (D) The State shall have concurrent jurisdiction to commence prosecutions for violation of any applicable state civil or criminal law or regulatory requirement as set forth in the Sections 9(A) and 9(B) of this Compact.
- (E) In order to administer and enforce state laws as set forth in Section 9 of this Compact, any papers required by law to be served may be served on tribal lands by any employee or agent of the State. The State shall notify the Tribe of such service as soon thereafter as possible, unless such service relates to an ongoing criminal investigation or prosecution.
- (F) The provisions of this Compact shall not be construed so as to create criminal jurisdiction over any person except as it presently exists under federal and state law.
- (G) Except as expressly provided herein, this Compact shall not be construed to limit any jurisdiction or remedies available to either party pursuant to the terms of the IGRA or other applicable law.
- (H) Nothing contained in this Compact shall be construed to limit the civil or criminal jurisdiction of the federal government in enforcing any applicable federal statute or regulation.

Section 10. AMENDMENTS.

The terms and conditions of this Compact shall not be modified, amended or otherwise altered except by written agreement of the Parties and enactment as set forth in Sections 4(B) and 13 of this Compact. Either the Tribe or the State may request a re-negotiation of the terms of the Compact based upon a change in federal or State law that alters gaming permitted by the laws of the State of North Carolina.

Section 11. **DISPUTE RESOLUTION.**

- (A) If after the effective date of this Compact the State believes a gaming activity being conducted by the Tribe is in violation of the terms of the Compact, the State shall give notice to the Tribe to cease and desist such gaming activity and the State and the Tribe shall determine the validity of the State's objection in the following manner:
- (1) The State shall notify the Tribe in writing of the gaming activity deemed to be in violation of the Compact, the reasons for or manner of violation by the activity, and a requested method of correcting the violation.
 - (2) The Tribe shall respond to the notice in writing within twenty days from receipt. Such response shall be in writing, signed by the Principal Chief of the Tribe, and shall either concur in the non-compliance and provide written assurances of prompt action to cure the non-compliance, or contest the allegation of the violation.
 - (3) Nothing in this section shall limit the rights or remedies available to the parties under the Act.
- (B) In the event either party believes that the other party has failed to comply with any requirement of this Compact, it may invoke the following procedures:
- (1) The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific statutory, regulatory or Compact provision alleged to have been violated and shall specify the factual basis of the alleged noncompliance. The State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.
 - (2) In the event the dispute is not resolved to the satisfaction of the parties within ninety (90) days after service of the notice set forth in Section 11(B)(1), either party may pursue any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact, and nothing in this Compact shall be interpreted to limit in any way the rights and remedies of the Tribe or the State under federal or state law.
 - (3) Nothing in Section 11(A) or 11(B) shall be construed to waive, limit or restrict any remedy which is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nor shall Section 11(A) or 11(B) be construed to preclude, limit or restrict the ability of the parties to pursue,

by mutual agreement, alternative methods of dispute resolution, including but not limited to mediation or arbitration; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

(C) Both the Tribe and the State agree that in the event that a dispute arises as to an interpretation of the provisions of this Compact, or as to any of the rights, responsibilities or obligations attaching to the parties hereto, either party may commence an action in federal district court for the purpose of resolving such dispute.

Section 12. **CHOICE OF LAWS.**

The Tribe and the State agree that laws of the State of North Carolina shall be applied in any action arising from this Compact, however, this provision does not preclude the application or interpretation of applicable federal law.

Section 13. **EFFECTIVE DATE.**

This First Amended & Restated Compact shall be effective upon signature by the Principal Chief of the Eastern Band of Cherokee Indians, signature by the Governor of the State of North Carolina, the passage of authorizing legislation by the North Carolina General Assembly, and compliance with all of the requirements of 11 (d)(3)(B) of the Act, 25 U.S.C. 2710(d)(3)(B).

Section 14. **DURATION.**

This First Amended & Restated Compact shall remain in full force and effect for a period of thirty (30) years from the date the First Amended & Restated Compact is approved by the Secretary of Interior and published in the Federal Register.

Section 15. **NOTICES.**

All notices required or authorized to be served shall be served by first class mail at the following addresses:

Principal Chief
Eastern Band of Cherokee Indians
Post Office Box 455
Cherokee, North Carolina 28719

Governor
State Capitol
Raleigh, North Carolina 27611

Section 16. **SEVERABILITY.**

In the event that any section of this Amended & Restated Compact is held invalid, it is the intent of the parties that the remaining sections of the Compact shall continue in full force and effect.

However, in the event that the revenue sharing or exclusivity portions of this First Amended & Restated Compact at Section 4.1 are held invalid, or not made lawful for the Tribe in authorizing legislation by the North Carolina General Assembly, or are not approved in full by the Department of Interior then the Compact shall immediately revert in its entirety to the then existing Compact in effect on the day immediately prior to the signing of this First Amended & Restated Compact.

Section 17. EXECUTION.

This First Amended & Restated Compact may be executed in multiple parts and by facsimile or other electronic signatures. Each and all parts are equally valid.

IN WITNESS WHEREOF, the State of North Carolina and the Eastern Band of Cherokee Indians have hereto set their hands and seals.

Dated: November 20, 2011

STATE OF NORTH CAROLINA

By: Beverly Eaves Perdue
Beverly Eaves Perdue
Governor

Dated: November 28, 2011

EASTERN BAND OF CHEROKEE INDIANS

By: Michell Hicks
Michell Hicks
Principal Chief

ATTEST:

Elaine F. Marshall
Elaine F. Marshall
Secretary of State,
State of North Carolina

Approved as to form and Procedure for the State:

By: A. Cooper, III
A. Cooper, III
Attorney General
State of North Carolina

Approved as to form and Procedure for the Tribe:

By: Annette E. Tarnawsky
Annette E. Tarnawsky
Attorney General

Eastern Band Of Cherokee Indians

Approved this the 3 day of August, 2012.

By: [Signature]
Acting Assistant Secretary of the
Department of Interior
Bureau of Indian Affairs