UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CHEROKEE NATION, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.: 1:20-cv-2167 (TJK)
	)	
UNITED STATES DEPARTMENT OF THE INTERIOR, *et al.,*	)	
	)	
	)	
Defendants.	)	
	/	

MOTION FOR SUMMARY JUDGMENT BY
DEFENDANTS CHIEF BUNCH AND MEKKO GIVENS

Defendants, JOE BUNCH, Chief of the United Keetoowah Band of Cherokee Indians in Oklahoma ("UKB"), and BRIAN GIVENS, Mekko of the Kialegee Tribal Town ("KTT"), hereby move for summary judgment on all claims against them, pursuant to Fed. R. Civ. P. 56(a). Included with this motion is a memorandum of points and authorities in support.

Consistent with Local Rule 7(h), included with this motion is a statement of material facts for which Defendants JOE BUNCH and BRIAN GIVENS contend there is no genuine issue. A form of proposed Order is attached pursuant to Local Rule 7(c).

For the reasons explained in the attached memorandum of points and authorities, Defendants JOE BUNCH and BRIAN GIVENS respectfully request that this Court grant the motion.

Respectfully submitted this 14th day of March, 2022.

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DEFENDANTS CHIEF BUNCH AND MEKKO GIVENS'
MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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I. FACTUAL BACKGROUND

The undisputed facts of the record are as follows: On July 1, 2020, Governor Stitt of Oklahoma signed new tribal-state gaming compacts with the United Keetoowah Band of Cherokee Indians in Oklahoma ("UKB") and the Kialegee Tribal Town ("KTT"), two federally recognized tribes in Oklahoma. Pls.' Second Amend. Compl., ECF # 104 at ¶ 101. The Compacts authorize the UKB and KTT to operate Class III "Covered Games." ECF # 104, Ex. 3 at 202, 215 and Ex. 4 at 229, 242. The UKB Compact is a site-specific compact for a facility within the exterior boundaries of Logan County. ECF # 104, Ex. 3 at 207. The KTT Compact is a site-specific compact for a facility within the exterior boundaries of Oklahoma County. ECF # 104, Ex. 4 at 234. As part of the Compacts, and in order to provide additional meaningful concessions to the Tribes, the Governor agreed to concur in any determination by the Secretary of the Interior ("the Secretary") to take land into trust for gaming purposes within the agreed-upon counties. ECF # 104, Ex. 3 at 207 and Ex. 4 at 234. For their parts, the Tribes agreed to pay a "Substantial Exclusivity Fee" to the State, to certify annually that the gaming revenues from their respective site-specific facilities were derived at least 80% from Covered Games, and that the substantial exclusivity guarantees to the Tribes would not prohibit the State to operate an iLottery in the future. ECF # 104 Ex. 3 at 202–03, 216, and Ex. 4 at 229, 242.

The UKB and KTT submitted their Compacts to the Secretary pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2710(d)(8). ECF # 104 at ¶ 101. The Secretary had already received comments from Governor Stitt setting forth the Governor's position that he possessed the requisite authority under state law to enter into the Compacts. *Id.* at ¶ 82. The Secretary also received comments from the Cherokee Nation and the Citizen Potawatomi Nation, raising similar or identical issues as presented in plaintiff's complaint. *Id.* at ¶ 102.

The Secretary took no action on the Compacts during the 45-day review period under IGRA, and therefore, on August 15, 2020, the UKB and KTT Compacts were deemed approved pursuant to

statute. *Id.* at ¶ 105. On September 8, 2020, the Department of the Interior published notice of the approval of the Compacts in the Federal Register. *Id.* at ¶ 106. Over four months later, the Oklahoma Supreme Court decided *Treat v. Stitt*, 481 P.3d 240 (Okla. 2021) ("*Treat II*"), holding that Governor Stitt lacked the authority under state law to enter the UKB and KTT Compacts and finding the Compacts invalid under Oklahoma law. *Treat II*, 481 P.3d at 244.

Plaintiffs have sued the Department of the Interior, Governor Stitt, Chief Bunch, and Mekko Givens, arguing that the Secretary's approvals of the UKB and KTT Compacts were arbitrary, capricious, an abuse of discretion, and contrary to law because Governor Stitt lacked the authority to enter into the Compacts and because the Compacts violate IGRA. As there are no genuine issues of material fact and all of plaintiff's claims against Chief Bunch and Mekko Givens lack legal merit, Chief Bunch and Mekko Givens now seek summary judgment.

II. SUMMARY JUDGMENT STANDARD

Pursuant to Fed. R. Civ. P. 56(a), Defendants Bunch and Givens request this Court to enter summary judgment in their favor on all causes of action. Summary judgment is appropriate if "the moving party has shown that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Airlie Found. v. I.R.S*, 283 F. Supp. 2d 58, 61 (D.D.C. 2003) (*citing Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986) (other citation omitted); *see also* Fed. R. Civ. P. 56(a). A fact is "material" if it is capable of affecting the substantive outcome of the litigation. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). A dispute is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *See Scott v. Harris*, 550 U.S. 372, 380 (2007). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion" by either "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

III. ARGUMENT

The Court should grant Defendants Bunch and Givens' Motion for Summary Judgment because there are no facts in dispute in this case, and the legal issues presented against Defendants Bunch and Givens should all be resolved in their favor. The UKB & KTT Compacts, having gone through the entire federal approval process as set forth in IGRA, remain valid and effective as a matter of federal law. The Oklahoma Supreme Court's later ruling on a previously undecided state law question cannot invalidate the approved Compacts under federal law. The Secretary properly approved the Compacts as they are lawful and comply with IGRA. Relying on the Secretary's approval and their valid Compacts, Chief Bunch and Mekko Givens have acted consistently with this approval and in accordance with federal law.

A. The UKB and KTT Compacts are valid as a matter of federal law and later rulings by the Oklahoma Supreme Court do not override Secretarial approval.

Plaintiffs' first, second, and third causes of action are all variations on the argument that Governor Stitt lacked authority to enter the UKB and KTT Compacts under Oklahoma law, thus making the actions of the Secretary in approving the Compacts arbitrary, capricious, an abuse of discretion and contrary to law. ECF # 104 at ¶¶ 234–44. However, in an analogous context, a different judge on this Court held that such an argument "misapprehends the nature and effect of approval by the Secretary, and overlooks the fact that the validity of a compact under state law is a separate requirement from Secretarial approval[.]" *Detroit Int'l Bridge Co. v. Gov't of Canada*, 192 F. Supp. 3d 54, 76 (D.D.C. 2016) (Collyer, J.) (*internal quotations omitted*) (*citing Rhode Island v. Narragansett Indian Tribe*, 1995 WL 17017347 (D.R.I. Feb. 3, 1995); *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997)), *aff'd*, 883 F.3d 895 (D.C. Cir. 2018). The UKB & KTT Compacts became valid and effective, as a matter of *federal law*, on September 8, 2020, when the Department of the Interior published notice in the Federal Register that the Compacts had become effective. The approval notice stated, in its entirety:

> AGENCY: Bureau of Indian Affairs, Interior
>
> ACTION: Notice.
>
> SUMMARY: On July 1, 2020, the Kialegee Tribal Town, and the United Keetoowah Band of Cherokee Indians in Oklahoma, respectively, submitted compacts with the State of Oklahoma governing certain forms of Class III gaming. This notice announces that the Kialegee Tribal Town and State of Oklahoma Gaming Compact and the United Keetoowah Band of Cherokee Indians and State of Oklahoma Gaming Compact are taking effect.
>
> DATES: The compacts take effect September 8, 2020.
>
> SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100-497, 25 U.S.C. 2701 et seq., the Secretary of the Interior shall publish in the Federal Register notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts are subject to review and approval by the Secretary. The Secretary took no action on the Kialegee Tribal Town and State of Oklahoma Gaming Compact and the United Keetoowah Band of Cherokee Indians and State of Oklahoma Gaming Compact within 45 days of their submission. Therefore, the Compacts are considered to have been approved, but only to the extent they are consistent with IGRA. See 25 U.S.C. 2710(d)(8)(C).
>
> Tara Sweeney,
> Assistant Secretary—Indian Affairs

Indian Gaming; Tribal-State Class III Gaming Compacts Taking Effect in the State of Okla., 85 Fed. Reg. 55,472 (Dept. of the Interior Sept. 8, 2020).

A *post hoc* state-court ruling on the Governor's authority to enter the UKB and KTT Compacts under *state law* cannot undo the effectiveness of the Compacts under *federal law*. First, the Secretary was not required to consider an undecided state law question, and second, even if the Secretary were so required, the Secretary's action in this case was not arbitrary, capricious, an abuse of discretion, or contrary to law. Finally, after the Compacts became valid and effective under federal law, the later Oklahoma Supreme Court decision did not invalidate the Compacts as a matter of federal law—any action or remedies that the plaintiffs wish to seek must be addressed through state law mechanisms.

1. The Secretary was not required to consider Oklahoma law before approving the Compacts.

IGRA does not require the Secretary to resolve competing interpretations of state law when a governor signs a compact that is then presented for federal approval by the compacting governor and the tribe. As this Court has previously stated regarding IGRA compacts: "the Secretary may only disapprove a tribal-state compact or compact amendment within 45 days of its receipt, only for one of three specific reasons, and if the Secretary fails to disapprove the compact or compact amendment its approval must be promptly published in the Federal Register." *Connecticut v. United States Dep't of the Interior*, 344 F. Supp. 3d 279, 290 (D.D.C. 2018); *see also Kickapoo Tribe of Indians v. Babbitt*, 827 F. Supp. 37, 44 (D.D.C. 1993) ("The Secretary may disapprove a compact only for one (or more) of three deficiencies"), *rev'd on other grounds*, 43 F.3d 1491 (D.C. Cir. 1995).

The three allowable reasons for compact disapproval are: "(1) it violates the IGRA, (2) it violates any other provision of Federal law that does not relate to jurisdiction over gaming on tribal land, or (3) it violates the United States' trust obligations to Native Americans." *Connecticut*, 344 F. Supp. 3d at 289; *see also* 25 U.S.C. § 2710(d)(8)(B). "In the absence of one of these violations, . . . the Secretary *must* approve the compact." *Kickapoo Tribe of Indians,* 827 F. Supp. at 43 (emphasis in original), *rev'd on other grounds,* 43 F.3d 1491 (D.C. Cir. 1995). In this case, the Oklahoma Supreme Court found that Governor Stitt exceeded his authority under *state* law. *See Treat II*, 481 P.3d at 243. Plaintiffs' related claims that Governor Stitt acted *ultra vires* under state law in negotiating and signing the UKB and KTT Compacts do not fall within any of the three reasons Congress provided in IGRA for disapproval.

Not only do the substantive provisions of IGRA preclude a compact disapproval based on state law, but the 45-day approval deadline reinforces the same conclusion. Congress could not have intended the Secretary to engage in a state-law analysis, plus the required federal-law analysis, within such a short timeframe. *See Pueblo of Santa Ana v. Kelly,* 104 F.3d 1546, 1557 (10th Cir. 1997) ("We

agree with the Tribes that Congress did not intend to force the Secretary to make extensive inquiry into state law to determine whether the person or entity signing the compact for the state in fact had the authority to do so. . . . [T]he Secretary is not expected to resolve state law issues regarding that authority in the 45-day period given to him to approve a compact."); *Narragansett Indian Tribe*, No. CIV.A. 94-0619-T, 1995 WL 17017347, at *2 (D.R.I. Feb. 3, 1995) ("Nothing in IGRA even suggests that Congress intended that the Secretary determine who is authorized to execute such compacts on behalf of states. . . . [I]t is patently unreasonable to expect that potentially complex questions of that nature can be adequately addressed during the 45-day review period."); *Langley v. Edwards*, 872 F. Supp 1531, 1535 (W.D. La. 1995) ("No substantive right exists to challenge the approval on the basis of alleged state law irregularities. The IGRA expresses a congressional policy of putting compacts into force quickly, by requiring the Secretary to approve or reject them within forty-five days of their submission."), *aff'd,* 77 F.3d 479 (5th Cir. 1996).

Plaintiffs cannot show that the Secretary was required to examine Oklahoma law before the IGRA review period closed. Indeed, as these cases make clear, such an examination of Oklahoma law was not even allowed under IGRA. Further, such an examination would not have borne fruit because no court had resolved the question of the Governor's authority at that time.

2. Even if there were a duty to inquire into state law, the Secretary's no-action approval would not be arbitrary, capricious, an abuse of discretion, or contrary to law.

If this Court should find that the Secretary did have a duty to resolve the state-law issue of the Governor's authority, then the Court also should find that the Secretary fulfilled that duty in accordance with federal standards. If the Secretary was required to inquire into the Governor's state-law authority, then a consideration of the competing interpretations of Oklahoma law, and the Secretary's subsequent decision to allow the Compacts to be deemed approved under IGRA, was a reasonable exercise of discretion, and certainly not a "clear error of judgment." *Motor Vehicle Mfrs.*

Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 31 (1983); *see also Detroit Int'l Bridge Co. v. Gov't of Canada*, 883 F.3d 895, 899 (D.C. Cir. 2018) ("But even assuming a state-law inquiry was required, the [International Bridge Act] does not require this court to review the state-law question *de novo*. Instead, the question for this court would be whether the Secretary made a clear error of judgment.") (*internal quotations omitted*).

In *Detroit Int'l Bridge*, the D.C. Circuit found that the federal government acted reasonably when it relied on an interpretation of state law provided by the highest executives of state office. *Detroit Int'l Bridge,* 883 F.3d at 900 ("These objections do not . . . diminish the adequacy of the Secretary's inquiry or the correctness of the legal advice received, much less show that the Secretary was arbitrary and capricious in relying on the legal advice from the Office of the State Attorney General and Counsel to the Governor.").

Moreover, the Supreme Court has warned that in reviewing agency actions "a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 30. This is especially true where, as was the case here, the Secretary was required by statute to make a decision before the State's Supreme Court resolved the state law issue. *See Detroit Int'l Bridge,* 883 F.3d at 900 ("Notably, this is not a case in which the Michigan Supreme Court had spoken on the state-law question to the contrary[.]"). Even if a federal court would now conclude differently regarding the Governor's state-law authority, the prior agency action was not arbitrary, capricious, an abuse of discretion, or contrary to law if the Secretary's interpretation was not a clear error of judgment at the time it was made.

In this case, as part of the Secretary's review of the Compacts, the Secretary received competing comments interpreting Oklahoma law from the Governor's Office of General Counsel, the Oklahoma Attorney General, and the plaintiffs. ECF # 104 at ¶ 82, 83, 89. The assurances provided to the Secretary from the Governor were not merely self-serving conclusions. Governor Stitt provided a

detailed, 11-page memorandum that included a thorough analysis of the Oklahoma Constitution, relevant statutes, case law, and opinions from the Oklahoma Attorney General's office that concluded the Governor had the constitutional authority to enter into similar agreements. *See* Decl. of Klint Cowan, Attorney General of the UKB and Counsel to the KTT ("Cowan Decl.") (filed hereto as Ex. A) at ¶ 3 and Memo. from Office of the General Counsel, Oklahoma Governor's Office, to Director Paula Hart, Office of Indian Gaming, U.S. Dept. of the Interior (Apr. 24, 2020) (filed as Ex. 1 to the Cowan Decl.). [1]

Such an analysis was much more than the mere certification required by IGRA's implementing regulations, 25 C.F.R. § 293.8(c),[2] and consequently, it was more than sufficient to support the Secretary's decision to accept the proposed Compacts and allow them to become deemed approved. While the Oklahoma Supreme Court ultimately disagreed with the Governor's position, to suggest that the Secretary made a "clear error of judgment" in relying on a detailed and well-reasoned memorandum from the Office of the General Counsel of the Oklahoma Governor's Office would entirely upset the standard statutory scheme for intergovernmental agreements subject to federal approval, such as that found in IGRA. A different situation would have presented itself had the Oklahoma Supreme Court already spoken definitively on the question, and the Secretary nevertheless approved the Compacts. But when presented with an undecided question of state law, it was not a "clear error in judgment" for the Secretary to rely on the opinion of the highest executive office in the State of Oklahoma, even if we now know, in hindsight, that the State Supreme Court would later issue a different opinion.

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[1] *Also available at* https://oklahoma.gov/content/dam/ok/en/governor/documents/memorandum-from-general-counsel.pdf.

[2] The Secretary's implementing regulations provide that documentation submitted with a compact or amendment must include: . . . (c) Certification from the Governor or other representative of the State that he or she is authorized under State law to enter into the compact or amendment." 25 C.F.R. § 293.8(c).

3. The UKB and KTT Compacts are still in effect because a later state court ruling cannot invalidate Secretarial approval.

The Secretary's action in approving a compact (or allowing the compact to be deemed approved), cannot be retroactively invalidated by subsequent, collateral state court actions. Under IGRA, a compact must be both "entered into" by the parties under their respective laws, and it must be "in effect." 25 U.S.C. § 2710(d)(1)(C). The majority of courts to examine this provision of IGRA have concluded that the validity of a compact under state law ("entered into") is independent from Secretarial approval ("in effect").

The Tenth Circuit examined this issue in *Pueblo of Santa Ana v. Kelly,* 104 F.3d 1546 (10th Cir. 1997) and, after a survey of several district court opinions, decided to follow the majority view, concluding that the "validity of a compact under state law is a separate requirement from the Secretarial approval." *Id.* at 1554 (construing *Narragansett Indian Tribe of Rhode Island v. Rhode Island*, No. CIV.A. 94-0619-T 1996 WL 97856, at *2 (D.R.I. Feb. 13. 1996); *Kickapoo Tribe of Indians*, 827 F. Supp. at 46; *Willis v. Fordice*, 850 F. Supp. 523, 532–33 (S.D. Miss. 1994); *Langley v. Edwards*, 872 F. Supp. 1531, 1535 (W.D. La. 1995)). In *Kelly*, the Governor of New Mexico entered into thirteen identical tribal-state compacts with various federally recognized tribes. *Kelly,* 104 F.3d at 1550. The New Mexico Supreme Court ruled that the Governor lacked the authority to enter into the compacts under New Mexico law. *Id.* at 1550–51. In distinguishing between the role of state law in determining whether a compact was validly "entered into" and the role of federal law in determining whether the compact was "in effect," the Tenth Circuit analyzed 25 U.S.C. §§ 2710(d)(1)(C) and 2710(d)(6) and found that "[b]oth provisions separate the 'entered into' requirement from the 'in effect' requirement[.]" *Id.* at 1553. Therefore, the Tenth Circuit found that while a state court ruling may implicate whether the compact was "entered into" as a matter of state law, that requirement is independent of the compact's effectiveness pursuant to federal approval. *Id*. at 1553.

Here, because the later state court ruling does not implicate the Secretary's independent duty to put the compact into effect, that state court ruling also cannot—and did not—make the acts of the Secretary arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. Therefore, the UKB and KTT Compacts are still "in effect" under federal law.

4. The Oklahoma Supreme Court's invalidation of the UKB and KTT Compacts under state law does not affect their status under federal law.

While the Supreme Court of Oklahoma has purported to invalidate the UKB and KTT Compacts as a matter of state law, [3] the Compacts remain valid and approved under federal law. Under the standards set by this Court, an intergovernmental agreement made pursuant to federal law and approved by the federal government is valid as a matter of federal law, even if it later becomes evident that the governor's signing was *ultra vires* under state law. In *Detroit Int'l Bridge Co. v. Gov't of Canada*, 192 F. Supp. 3d 54 (D.D.C. 2016), the Governor of Michigan entered into a "Crossing Agreement" with the Canadian government pursuant to the federal International Bridge Act ("IBA") for the construction of a bridge between Michigan and Canada. *Id.* at 61. The effectiveness of this agreement was conditioned upon approval of the Secretary of State. *Id.* Plaintiffs in that case similarly challenged the Secretarial action, arguing that the Governor of Michigan acted *ultra vires* in signing the Crossing Agreement. At the time of Secretarial approval, there was some disagreement as to the

[3] Even after *Treat II*, the Governor's actions were sufficient to bind the Governor and the State of Oklahoma to the subject Compacts under the doctrine of apparent authority. The actions of Governor Stitt, including his Office's communications to the UKB and KTT, plus the persuasive memoranda supplied by the Governor's Office to the Tribes and the Secretary, are all evidence that Governor Stitt was held out as having the authority to act under state law. The United States Supreme Court has stated that a "government or public authority is not bound [by acts or declarations made without any authority], unless it manifestly appears that the agent was acting within the scope of his authority, *or that he had been held out as having authority to do the act,* or was employed in his capacity as a public agent to do the act or make the declaration for the government." *Whiteside v. United States*, 93 U.S. 247, 256–57 (1876); *see also George H. Whike Const. Co. v. United States*, 140 F. Supp. 560, 564 (Ct. Cl. 1956). Here, the chief executive of the State of Oklahoma was held out to tribal sovereigns and the United States Government as having the authority to enter into the Compacts. Although this Court need not resolve the issue, the UKB and KTT reasonably expect that the Governor will act under state law to honor his commitments in the subject Compacts.

authority of the Governor. *Id.* at 62. The Secretary received comments, including comments from Michigan legislators and competing bridge operators, that questioned the validity of the Crossing Agreement under Michigan state law. However, the Secretary also received interpretations of Michigan law from the Offices of the Governor and the Michigan State Attorney General that concluded the Governor had the authority to enter into the Crossing Agreement without any further legislative approvals.

In reviewing the Secretarial approval, this Court compared the IBA to IGRA, calling the two federal statutes "highly similar[.]" *Id.* at 75. Following the precedent set by this and other courts under IGRA, the Court held that the Secretary was not required to determine the validity of the agreement under state law. *Id.* at 75–76. Therefore, the Court concluded that "[plaintiff]'s *ultra vires* claim lacks merit *even if the Crossing Agreement were executed in violation of Michigan law*." *Id.* at 71 (emphasis added). The Court also found that the Supreme Court case law on the Compact Clause of the United States Constitution provided analogous support for this conclusion. *Id.* at 76 ("In the same way that the purpose of congressional consent under the Compact Clause does not encompass a duty to ensure that states act in conformity with their own laws, the IBA cannot be read to require a similar obligation.") A review of that precedent led the Court to conclude that the Supreme Court "has never indicated the Congress exceeds its constitutional authority when it exercises its discretion and provides consent to an agreement that turned out to be unlawfully executed under state or foreign law. *Id.* at 73 (*citing Dyer v. Sims,* 341 U.S. 22, 30 (1951); *Hinderlinder v. La Plata River & Cherry Creek Ditch Co.,* 304 U.S. 92, 102–105 (1938)).

Because validity of the compact under state law and federal approval are separate requirements, the Court affirmed that "compact approval by the Secretary cannot be invalidated on the basis of a governor's *ultra vires* action[.]" *Id.* at 76 (quoting *Langley*, 872 F. Supp. at 1535). The Court of Appeals not only affirmed this holding, but also included the alternative rationale that Secretarial

approval was not arbitrary, capricious, an abuse of discretion, or contrary to law because the Secretary did not make a "clear error of judgment" in relying on the interpretation of Michigan executive officials in approving the agreement. *Detroit Int'l Bridge,* 883 F.3d at 899 (*quoting Motor Vehicle Mfrs. Ass'n,* 463 U.S. at 42).

In the present case, nothing in IGRA requires a different result. In comparing IGRA to the IBA, the Court found that the text of the two statutes "contains virtually identical language" regarding the requirements for states to enter into agreements which are then subject to federal approval. *Detroit Int'l Bridge*, 192 F. Supp. 3d 54 at 75. The IBA grants states the right to "enter into agreements" with the governments of Canada or Mexico and provides that "[t]he effectiveness of such agreement shall be conditioned on its approval by the Secretary of State." 33 U.S.C. § 535a. Under IGRA, "[a]ny State and any Indian tribe may enter into a Tribal-State compact . . . but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register." 25 U.S.C. § 2710(d)(3)(B). Much like in *Detroit Int'l Bridge*, other Oklahoma officials submitted comments, as did plaintiffs, seeking to advance their interpretation of state law. Governor Stitt also submitted a memorandum outlining his authority and the validity of the agreements. The Secretary had no duty to determine whether Governor Stitt had the authority to enter into the agreements under Oklahoma law, and the Oklahoma Supreme Court had not decided the matter at the time of approval to provide definitive guidance to the Secretary. Furthermore, Secretarial reliance on the memorandum of Governor Stitt was not a clear error of judgment. Therefore, as with the agreement in *Detroit Int'l Bridge*, the UKB and KTT Compacts may be invalid as a matter of state law, but they remain valid as a matter of federal law.

5. Plaintiffs are free to seek relief under state-law mechanisms.

The UKB and KTT Compacts remain valid under federal law, but plaintiffs may seek remedies pursuant to state law. According to the D.C. Circuit, state-law challenges to the validity of an

intergovernmental agreement are appropriately decided in state court, not the federal courts. *Detroit Int'l Bridge Co.,* 883 F.3d 895 at 901 ("[Plaintiffs] may, of course, pursue its challenge to the Crossing Agreement in state court."). Plaintiffs, and any others who may oppose the subject Compacts based on the Governor's lack of authority, must seek their remedy pursuant to state-law mechanisms. Compact opponents have already challenged Governor Stitt's actions in the Oklahoma Supreme Court. *See Treat v. Stitt*, 473 P.3d 43 (Okla. 2020) (challenging the authorization of certain Class III games in the Otoe-Missouria and Comanche Compacts); *Treat v. Stitt*, 481 P.3d 240 (Okla. 2021) (challenging the authority of Governor Stitt to enter into the UKB and KTT Compacts). In addition, plaintiffs can raise this issue during the State's political processes, including the gubernatorial election, or petition the Oklahoma legislature to take action. For example, plaintiffs could ask the State to refuse to accept any future revenue share payments from the UKB or KTT, thereby depriving the Governor of the fiscal and political benefits of his actions and dissuading Governor Stitt, and perhaps future governors, from engaging in similar compact negotiations. In short, the Governor's violation of state law is a problem for the Oklahoma state legal and political processes to address.

As there is no genuine issue of material fact regarding the Governor's signing of the UKB and KTT Compacts, Chief Bunch and Mekko Givens request this Court enter summary judgment in favor of Chief Bunch and Mekko Givens on plaintiff's first three causes of action. The Secretary did not take any action that was arbitrary, capricious, an abuse of discretion, or contrary to law in approving the UKB and KTT Compacts because the Secretary was not required to consider an undecided state law question and did not make a clear error in judgment in relying on assurances from the Governor's Office of General Counsel. Once the Compacts were approved by the Secretary, a later state court ruling cannot invalidate the Compacts as a matter of federal law. Therefore, Chief Bunch and Mekko Givens request this Court enter summary judgment for Chief Bunch and Mekko Givens on plaintiff's first three causes of action.

B. The UKB & KTT Compact Provisions are Lawful.

Plaintiffs' fourth, fifth, sixth, and seventh causes of action allege that the UKB and KTT Compacts substantively violate IGRA in a variety of ways. ECF # 104 at ¶¶ 245–65. But the UKB and KTT Compacts do not violate any substantive requirements of IGRA. As stated succinctly by a sister court, where a "Compact comports with the provisions of the IGRA . . . the Secretary of the Interior [is] compelled to grant approval to the Compact, and such approval is valid as a matter of federal law." *Willis v. Fordice*, 850 F. Supp. 523, 533 (S.D. Miss. 1994), *aff'd*, 55 F.3d 633 (5th Cir. 1995). Because the UKB and KTT Compacts fully comply with IGRA, the Secretary was compelled to approve them. As the undisputed facts show that the Compacts do not violate IGRA, summary judgment is warranted as to plaintiff's fourth, fifth, sixth, and seventh causes of action.

1. IGRA allows gaming-site agreements in compacts.

Plaintiffs believe that the UKB and KTT Compacts violate IGRA and the federal trust responsibility by conditionally securing the concurrence of the Governor on a potential future Indian lands determination under 25 U.S.C. § 2719(b)(1)(A). Similar clauses have been approved by the Secretary of the Interior, and they are fully consistent with IGRA.

The concurrence of the Governor is a required element of the Secretarial two-part determination process under 25 U.S.C. § 2719(b)(1)(A). The two-part determination is a process to allow gaming on newly acquired trust lands. Gaming is generally prohibited on lands acquired by the Secretary in trust for an Indian tribe after October 17, 1988. 25 U.S.C. § 2719(a). One of the key mechanisms for a Tribe to have their property excepted from this prohibition is the Secretarial two-part determination. 25 U.S.C. § 2719(b)(1)(A). The Secretary is required to consult with the Tribe, State and local officials, and other nearby Indian tribes to determine: 1) "that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members," and 2) that it "would not be detrimental to the surrounding community[.]" *Id.* If the Secretary determines that the

newly acquired lands pass this two-part analysis, the property is eligible for gaming, but "only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination[.]" *Id.*

The UKB and KTT Compacts each include a clause that conditionally secures the concurrence of the Governor if the proposed gaming sites otherwise pass the Secretarial two-part determination. ECF # 104, Ex. 3 at 207 and Ex. 4 at 234. The Secretary previously approved compacts containing similar concurrence clauses. *See, e.g.,* Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon, art. II, sec. I (2010) ("Warm Springs 2010 Compact"), *approval notice published at* Indian Gaming, 76 Fed. Reg. 11,258 (Mar. 1, 2011),[4] *see also* Amendment to the Forest County Potawatomi Community of Wisconsin and State of Wisconsin Class III Gaming Compact, art. XXXVII, *approval notice published at* Indian Gaming; Tribal-State Class III Gaming Compact Taking Effect in the State of Wisconsin, 84 Fed. Reg. 15,630 (April 16, 2019) (including Governor's concurrence in a two-part determination as a part of bargain for payment adjustments).[5] In 2011, the Secretary allowed the Warm Springs 2010 Compact to become deemed approved. *See* Warm Springs 2010 Compact. The Warm Springs 2010 Compact provided that "the Governor will concur in taking [the parcel] into trust" if the Secretary determined, under 25 U.S.C. § 2719(b)(1)(A), that taking the particular parcel into trust was in the best interest of the Tribe and not detrimental to the surrounding community. *Id.*

The UKB and KTT came to the same agreements in their respective compacts where "the State through its Governor, in order to provide additional meaningful concessions to the Tribe . . . hereby

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[4] *available at* https://www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/pdf/508%20Compliant%202011.03.01%20Confederated%20Tribes%20of%20the%20Warm%20Springs%20Reservation%20Tribal%20State%20Gaming%20Compact.pdf.

[5] *available at* https://www.indianaffairs.gov/sites/bia.gov/files/assets/as-ia/oig/pdf/508%20Compliant%2004.16.2019%20Forest%20County%20Potawatomi%20Community%20Compact%20Amendment.1.pdf.

agrees to concur in any determination by the Secretary of the Interior that [the parcels] . . . are eligible for Gaming under 25 U.S.C. § 2719(b)(1)(A)." ECF # 104 Ex. 3 at 207 and Ex. 4 at 234.

The Secretary's decision to allow the UKB and KTT Compacts to become deemed approved reflects a deliberate interpretation of IGRA that the statute does not preclude compacts from containing a promise from the Governor that he will concur in a future Secretarial two-part determination. Had the Secretary's interpretation of IGRA been otherwise, the Compacts would have been disapproved. The recent history of Secretarial actions involving tribal-state compacts with concurrence clauses supports this conclusion. Five years before the Warm Springs 2010 Compact's approval, the Bush Administration changed longstanding practice at the Department and cited the compact's Secretarial two-part concurrence clause as one factor that—in its view—required disapproval. *See* Letter from James Cason, Associate Deputy Secretary, to Ron Suppah, Chairman, Confederated Tribes of Warm Springs Reservation of Oregon (May 20, 2005).[6] But in 2010, under the Obama Administration, the Secretary returned to the Department's prior practice and allowed a new version of the Warm Springs Compact to become deemed approved—this new version contained the same gubernatorial Indian lands concurrence clause.

In reversing the Department's prior policy of disapproving such compacts, the Warm Springs 2010 Compact approval reflected a considered interpretation of IGRA that a gubernatorial Indian lands concurrence clause does not violate the statute. Moreover, in allowing the UKB and KTT Compacts to become deemed approved, the Secretary reinforced this interpretation of IGRA—nothing in IGRA prevents the parties to a compact from making agreements with regard to potential future gaming sites,

[6] *available at* https://www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/pdf/508%20Compliant%202005.05.20%20Confederated%20Tribes%20of%20the%20Warm%20Springs%20Reservation%20Tribal%20State%20Gaming%20Compact.pdf.

even if such potential gaming sites are not yet in trust or have not yet been through a Secretarial two-part determination.

The Secretary's interpretation is consistent with the text of IGRA, which provides that a tribal-state compact may include provisions relating to "any other subjects that are directly related to the operation of gaming activities." 25 U.S.C. § 2710(d)(3)(C)(vii). The Indian lands status of the facility is directly related to its operation; it is a fundamental legal prerequisite to the operation of any Indian gaming activities. 25 U.S.C. § 2719(d)(1). Therefore, the plain language of IGRA affirmatively allows such agreements to be included in Class III compacts.

Even if the Court were to find that the text of IGRA is ambiguous on this point, and the Secretary's interpretation not subject to deference, where "neither side can prevail by quoting the dictionary[,]" this Court should look to the legislative context including "the general environment in which IGRA was enacted, its structure and general purpose." *City of Roseville v. Norton*, 348 F.3d 1020, 1027 (D.C. Cir. 2003). In *City of Roseville*, the court was asked to interpret the restoration of lands exception under IGRA, and on appeal, the Secretary did not invoke deference as a basis for affirmation. *See id.* at 1025. The D.C. Circuit determined that both sides offered a syntactically plausible statutory reading and so turned to the context surrounding IGRA. The court noted that "[t]he general purpose of IGRA is 'promoting tribal economic development' and 'self-sufficiency.' A reading allowing the Tribe to participate in that economic base furthers this purpose of IGRA." *Id.* at 1030. As with *City of Roseville*, this arms-length agreement between the Governor of Oklahoma and the UKB and KTT Tribes allows tribes not otherwise able to profitably participate in IGRA gaming to realize the benefits of the statute, as many other tribes with better geographical options have already done.

Finally, approving the Compacts, and upholding their validity, does not preclude plaintiffs from full participation in the Secretarial two-part determination process. While the Compacts offer the Tribes an assurance of the Governor's concurrence in the Secretarial two-part determination, "IGRA

does not allow a state governor to have land taken in trust by the Federal Government." *Confederated Tribes of Siletz Indians of Oregon v. United States,* 110 F.3d 688, 698 (9th Cir. 1997). Rather, a Secretarial two-part determination is conditioned "on two events: (1) the Secretary determining that gaming on those lands would be beneficial to the tribe and not detrimental to the surrounding community; and (2) the Governor's concurring in that determination." *Id.* Plaintiffs will have the opportunity to present arguments about the status of the parcels during the Secretarial two-part determination process, including presenting evidence to the Secretary regarding the effect on the surrounding community, but that process is entirely separate from the compact approval process and offers no basis to challenge the Secretary's action here.

2. The Compacts' revenue-share provisions are supported by meaningful concessions.

Not only are the Compacts' gubernatorial concurrence provisions allowed under IGRA, but they also can form the basis of a "meaningful concession" provided by the State to justify the Compacts' revenue-share provisions. IGRA generally prohibits the State from imposing taxes, fees, charges, or other assessments on Indian Tribes. 25 U.S.C. § 2710(d)(4). "Where, as here, however, a State offers meaningful concessions in return for fee demands, it does not exercise 'authority to impose' anything. Instead, it exercises its authority to negotiate, which IGRA clearly permits." *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1112 (9th Cir. 2003). Plaintiffs claim in one breath that the revenue sharing provisions of the Compacts do not offer meaningful concessions to the UKB and KTT sufficient to justify the Compacts' revenue share provisions with the State, while in the next breath, they claim that the Compacts provide the UKB and KTT with "a significant competitive advantage." ECF # 104 at ¶¶ 5, 181. Plaintiffs cannot sustain the position that the UKB and KTT received a significant competitive advantage in a highly competitive market, but that they also received no meaningful concessions that would justify the revenue sharing provisions. The concurrence clause in each Compact is expressly stated as an "additional meaningful concession" to the Tribe. The

Governor is otherwise under no obligation to concur in a Secretarial two-part determination for the Tribes' new facilities and the concession to offer such concurrence was very valuable and clearly meaningful to both the State and the Tribes.

3. The Compacts do not regulate Class II gaming.

The UKB and KTT Compacts do not regulate Class II gaming. The UKB and KTT Compacts state that "nothing in this Compact shall limit the Tribe's right to operate any game that is class II under IGRA, and no class II games shall be subject to Substantial Exclusivity Fees." ECF # 104 Ex. 3 at 202 and Ex. 4 at 229. Despite this plain language, plaintiffs insist that the Compacts nevertheless regulate Class II games by requiring the UKB and KTT to certify annually that 80% of gaming revenues from their respective facilities are derived from Class III games. This does not amount to a regulation of Class II gaming.

The 80% revenue certification requirement does not amount to a regulation of class II "gaming activities." IGRA provides that tribal-state compacts may govern class III "gaming activities" on Indian lands. 25 U.S.C. § 2710(d)(3)(B). The Supreme Court has held that "gaming activities" has its ordinary meaning — the "roll of the dice and spin of the wheel." *Michigan v. Bay Mills Indian Cmty.,* 572 U.S. 782, 792 (2014). Nothing in the Compacts provides the State with any role in regulating Class II gaming activities; the State can make no standards, rules, nor even inquiries under the Compacts into the actual operation of Class II gaming activities, meaning the "roll of the dice," or, more appropriately for Class II gaming, the draw of the bingo number.

The only indirect, implied limitation placed on Class II gaming by the UKB and KTT Compacts is the required revenue ratio between Class III and Class II games. But even this limitation is largely illusory. The Compacts do not require the UKB or KTT to limit the number of Class II machines, or frequency of live Class II bingo games, or the revenue generated from Class II games. Both Tribes are free to expand their Class II gaming offerings at any time, to include as much Class II

gaming as the Tribes would like, provided that they also expand their Class III games to maintain the agreed upon revenue ratio. Furthermore, the Tribes are free to offer Class II gaming at any other Class II gaming facility on gaming eligible Indian lands, which would not be subject to the terms of the Compact or any other State regulation.

4. The Compacts do not authorize the State to operate iLottery.

In their fourth cause of action, plaintiffs claim that the UKB and KTT Compacts authorize the State to conduct iLottery. ECF # 104 at ¶ 248. But the UKB and KTT Compacts do not, and indeed cannot, authorize the State to conduct iLottery. The Compacts state that the goal of the compacts is to "provide the Tribe with substantial exclusivity over class III Covered Gaming consistent with the goals of IGRA." ECF # 104, Ex. 3 at 215 and Ex. 4 at 242. The Compacts also clarify that "[t]he Tribe agrees that the substantial exclusivity provided for in this compact shall not prohibit the operation of iLottery by the State." ECF # 104, Ex. 3 at 202 and Ex. 4 at 229.

Thus, the UKB and KTT Compacts do not "authorize" the State to conduct iLottery. They merely acknowledge that, should the State conduct iLottery in the future "subject to applicable laws," the Tribes will not consider the State's iLottery to violate the Compacts' substantial exclusivity clause. ECF # 104, Ex. 3 at 200 and Ex. 4 at 227.

In order to conduct iLottery, the State would still need to authorize the iLottery through legislation. Then the conduct of that iLottery would need to be operated such that it was "subject to applicable laws" approved by the Oklahoma legislature. The UKB and KTT Compacts do not purport to authorize the iLottery or change any rights for other tribes under any federal law or other tribal-state compact. The Compacts simply clarify that should the State pursue iLottery in the future, the UKB and KTT will not claim that the operation infringes on the Tribes' substantial exclusivity to conduct Class III gaming. If a future iLottery program by the State of Oklahoma violates federal law or conflicts

with compacts other than the UKB and KTT Compacts, then plaintiffs will have the opportunity to raise those issues in a separate litigation at a separate time.

C. Defendants Chief Bunch and Mekko Givens have not violated federal law.

Plaintiffs allege in their eighth cause of action that Chief Bunch and Mekko Givens have violated federal law, presumably IGRA, by making certain statements to the press, all of which are true, and none of which constitute anything regulated by IGRA or any other federal law. Therefore, plaintiffs' claims are without merit. Because the undisputed facts reveal that Chief Bunch and Mekko Givens have taken no actions that violate IGRA, or any other federal law, summary judgment is warranted on plaintiff's eighth cause of action.

1. Defendants' statements are true – the Compacts are valid and effective.

Plaintiffs' claims against Chief Bunch and Mekko Givens are intrinsically tied to their other causes of action. Plaintiffs' only grievances against Chief Bunch and Mekko Givens in particular are that, on behalf of their respective tribes, they: 1) submitted the subject Compacts to the Department of the Interior for approval; 2) after such approval, made public representations that the subject Compacts were valid and in effect; and 3) took unspecified actions to exercise jurisdiction and authority under the subject Compacts. ECF # 104 at ¶ 267. Chief Bunch and Mekko Givens have, in fact, made public representations about the validity of their Compacts and their intention to act on those Compacts. ECF # 104 at ¶ 231.k–l. However, plaintiffs' suggestion that these statements amount to a violation of federal law cannot be supported, especially where the Compacts are actually valid and approved as a matter of federal law. As previously demonstrated, the Compacts became valid and effective under federal law after publication in the Federal Register, and no provision of the Compacts violate IGRA. The statements of Chief Bunch and Mekko Givens therefore were accurate.

2. Defendants' statements about Compact validity and their unspecified actions regarding Compact implementation are not subject to IGRA or other federal law.

The statements by Chief Bunch and Mekko Givens are not subject to IGRA or any other federal law, regardless of their accuracy. Making public representations about the validity of the subject Compacts, and taking other pre-gaming actions toward Compact implementation, are not violations of IGRA, as no provision of IGRA, or any other federal law, addresses these subjects. *See e.g.* 25 U.S.C. § 2701, et seq. To commit a violation of IGRA requires the actual conduct of gaming. *See, e.g.*, Notice of Violation ("NOV") 09-35, Fort Sill Apache Tribe of Oklahoma (July 21, 2009) (basing NOV on actual conduct of gaming after developing facility on ineligible Indian lands).[7] IGRA regulates gaming, not preparing to game. 25 U.S.C. § 2702 (IGRA provides a statutory basis for the "operation of gaming" and the "regulation of gaming" by Indian tribes). Until there is gaming, as a matter of law, there can be no violation of IGRA. Therefore, plaintiffs have made no legitimate allegation of an IGRA violation against Defendants Chief Bunch and Mekko Givens. Nor have plaintiffs cited any other federal law that could provide the basis for their allegations.

IV. CONCLUSION

The UKB and KTT Compacts remain valid and effective as a matter of federal law. The Compacts were not disapproved by the Secretary and notice of their deemed approved status has been published in the Federal Register. No Compact terms violate IGRA, and the statements and actions of Chief Bunch and Mekko Givens in support of implementing the Compacts are true and not subject to

[7] *available at* https://www.nigc.gov/images/uploads/enforcement-actions/NOV-09-35.pdf.

federal law. Defendants Chief Bunch and Mekko Givens respectfully request this Court to grant their Motion for Summary Judgment.

Dated: March 14, 2022

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Attorneys for Defendants, JOE BUNCH, in his official capacity as the Chief of the United Keetoowah Band of Cherokee Indians in Oklahoma, and BRIAN GIVENS, in his official capacity as the Mekko of the Kialegee Tribal Town

EXHIBIT A
Declaration of Klint A. Cowan in Support of Defendants Chief Bunch and Mekko Givens' Motion for Summary Judgment

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CHEROKEE NATION, *et al.,*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.: 1:20-cv-02167 (TJK)
	)	
UNITED STATES DEPARTMENT OF THE INTERIOR, DAVID BERNHARDT, *et al.,*	)	
	)	
Defendants.	)	
_____/		

DECLARATION OF KLINT A. COWAN
IN SUPPORT OF DEFENDANTS CHIEF BUNCH AND MEKKO GIVENS' MOTION FOR SUMMARY JUDGMENT

I, Klint A. Cowan, hereby declare:

1. I am an attorney licensed to practice in Oklahoma. I am employed by Fellers Snider Blankenship Bailey & Tippens, P.C. I have represented the United Keetoowah Band of Cherokee Indians in Oklahoma ("UKB") as the UKB's Attorney General since 2017. I have represented the Kialegee Tribal Town ("KTT") as counsel since 2019. I represented both the UKB and the KTT throughout the negotiations for their Class III gaming tribal-state compacts at issue in the above-captioned litigation. I make this declaration to the best of my knowledge.

2. To date, neither Defendant Bunch nor the UKB have opened a gaming facility or conducted any gaming activity in Logan County pursuant to the UKB Compact. Neither Defendant Givens nor the KTT have opened a gaming facility or conducted any gaming activity in Oklahoma County pursuant to the KTT Compact.

3. Attached as **Exhibit 1** to this declaration is a true and correct copy of a memorandum produced by the Office of the General Counsel, Oklahoma Governor's Office, to Director Paula Hart, Office of Indian Gaming, U.S. Department of the Interior, dated April 24, 2020, a copy of which was

provided to me by Governor Stitt's negotiating team during the course of negotiations involving the UKB and KTT Compacts.

4. The Office of Indian Gaming, U.S. Department of the Interior, maintains a website where final Class III gaming tribal-state compacts are posted for public reference. Attached as **Exhibit 2** to this declaration is a true and correct copy of the Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon from 2005 that is posted on the Office of Indian Gaming's website.

5. Attached as **Exhibit 3** to this declaration is a true and correct copy of the Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon from 2011 that is posted on the Office of Indian Gaming's website.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of March, 2022, at Oklahoma City, Oklahoma.

Respectfully submitted,

/s/ Klint A. Cowan

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EXHIBIT 1 to
Declaration of Klint A. Cowan in Support of Defendants Chief Bunch and Mekko Givens' Motion for Summary Judgment

J. Kevin Stitt
Office of the Governor
State of Oklahoma

Memorandum

To: Director Paula Hart, Office of Indian Gaming, U.S. Department of the Interior

From: Office of the General Counsel, Oklahoma Governor's Office

Date: April 24, 2020

Re: Authority of Governor of Oklahoma to negotiate and execute gaming compacts on behalf of the State with federally recognized Indian Tribes within the State, and the applicability of federal law and state law to such negotiations and execution.

Issue: Does Federal and State Law permit the inclusion of Event Wagering in an Oklahoma Gaming Compact?

Position of the Governor's Office of the State of Oklahoma: Federal and State Law permit the inclusion of Event Wagering in an Oklahoma Gaming Compact.

Factual Background

1. On December 17, 2019, following his withdrawal from representing the State of Oklahoma in compact negotiations with Oklahoma's Indian Tribes, the Oklahoma Attorney General's office released the following statement:

> Under Article VI, Section 8 of the Oklahoma Constitution and 74 0.S. Sec. 1221, the governor is given authority to enter into agreements with the federally recognized tribes.

2. On April 18, 2020, the Governor of the State of Oklahoma, the Chairman of the Otoe-Missouria Tribe, and the Chairman of the Comanche Nation executed new gaming compacts. The Compacts authorize "Event Wagering" (a term defined in the new compacts) as one of the types of covered games.

3. On April 21, 2020, the Governor of the State of Oklahoma, the Chairman of the Otoe-Missouria Tribe, and the Chairman of the Comanche Nation conducted a public signing ceremony at the State Capitol. Thereafter, the compacts were made public for the first time.

4. Following the April 21, 2020, signing ceremony, the Oklahoma Attorney General confirmed: "The governor has the authority to negotiate compacts with the tribes on behalf of the state."

5. On April 22, 2020, the office of the Governor of the State of Oklahoma issued the following statement:

> A number of legal experts thoroughly researched and considered the interpretation of federal law for negotiating Event Wagering, and the interpretation of State law regarding the authority and role of the Governor to compact with Tribes. They are confident in the Governor's authority and the validity of the compacts under both state and federal law, and are focused on the momentum established by the new gaming compacts which usher in a bright future for Oklahoma's gaming market, leave behind the one-size-fits-all approach to the old Model Gaming compact, and expands opportunities for all parties for generations to come.

6. On April 23, 2020, Speaker of the House Charles A. McCall and President Pro Tempore Greg Treat submitted a letter to Governor Stitt, in which they averred the legislative branch's position "on actions taken [by the Governor] in negotiating and signing these purported "compacts." According to the Letter, the actions are "unauthorized by law and void without action by the Oklahoma Legislature." Such statements reflect fundamental misconceptions regarding the recent Compacts executed between the State and the Comanche Nation and Otoe-Missouria Tribe, respective tribal sovereigns in our State.

7. Subsequently, various tribes adverse to the Governor and the State of Oklahoma have relied on that letter in pleadings filed in the federal litigation.

Legal Analysis

I. The Governor Has Sole Authority to Negotiate and Execute Gaming Compacts in Oklahoma.

The Oklahoma Constitution, the Legislature, and the state Supreme Court have recognized that the Governor has the sole authority to compact with Indian tribes. Moreover, the constitution prohibits the Legislature from approving state-tribal compacts.

1. All three branches recognize the Governor's power to compact with tribal sovereigns.

Consistent with the April 21, 2020, statement of the Attorney General of Oklahoma, it is undisputed that the Governor has the sole power in Oklahoma to compact with Oklahoma's tribal sovereigns. In fact, on this point, all three branches concur. Article 2, section 8 of the Oklahoma Constitution states:

> "[t]he Governor shall cause the laws of the State to be faithfully executed, and shall conduct in person or **in such manner as may be prescribed by law, all intercourse and business of the State with other states and with the United States**, and he shall be a conservator of the peace throughout the State." (emphasis added).

The Oklahoma Constitution does not contain an "advice and consent" provision similar to the United States Constitution. Therefore, "any requirement that individual agreements or compacts negotiated by the Governor on behalf of the State with other sovereigns, such as Indian tribes, be approved by the Legislature would violate the principles of separation of powers." 2004 OK AG 27.

The Oklahoma Legislature has recognized the Governor's constitutional authority to negotiate and enter into compacts with federally recognized Indian tribes. The Legislature codified this authority in 74 O.S. § 1221(C)(1), which states: "The Governor is authorized to negotiate and enter into cooperative agreements on behalf of this state with federally recognized Indian tribal governments." The Oklahoma Legislature has also specifically recognized the power of the Governor pursuant to the Oklahoma Constitution to compact for Class III gaming activities. It passed 3A O.S. 2011 § 280 (State Tribal Gaming Act) which reads: "The State of Oklahoma through the concurrence of the Governor after considering the executive prerogatives of that office and the power to negotiate the terms of a compact between the state and a tribe."[1]

In 2013, the Oklahoma Supreme Court held that "[t]he Executive Branch of the State of Oklahoma, specifically the Governor, has been and continues to be the party responsible for negotiating compacts with the sovereign nations of this state." *Sheffer v. Buffalo Run Casino*, 315 P.3d 359, 364 (Okla. 2013). The court then included footnote 18, which cites Okla. Const. art. VI, § 8 ("The Governor shall cause the laws of the State to be faithfully executed, and shall conduct in person or in such manner as may be prescribed by law, all intercourse and business of the State with other states and with the United States. . ."); Okla. Const. art. VI, § 2 ("The Supreme Executive power shall be vested in a Chief Magistrate, who shall be styled 'The Governor of the State of Oklahoma.'").

2. The Legislature is constitutionally precluded from approving state-tribal compacts.

The April 23, 2020, letter from Speaker of the House Charles A. McCall and President Pro Tempore Greg Treat ("McCall/Treat Letter" or "Letter") to Governor Stitt states that the legislative branch's position is that the negotiation and signing of the compacts were actions "unauthorized by law" and that the compacts are "legally flawed." The Letter argues that the Governor "cannot unilaterally enter into the type of agreements signed [on April 22, 2020]" and that "the records of the Legislature and the law itself clearly show state-tribal gaming was always intended to be handled jointly, by both the legislative and executive branches of the State of Oklahoma. On this

[1] *See also* Oklahoma legislative leaders offer differing opinions on gaming compacts dispute, https://oklahoman.com/article/5649640/legislative-leaders-offer-differing-opinions-on-gaming-compacts-dispute ("We don't have any say in the negotiations on the compacts so I'm watching like all of you are." –Greg Treat) and ("I have full faith in our tribal leaders in the state of Oklahoma and in our governor that they'll get in there and get the deal put together" – Charles McCall).

matter and many others, the legislative branch sets the policy and the executive branch executes the policy." These statements, and the conclusions they provoke, are unequivocally wrong.

The McCall/Treat Letter purports to derive its authority for such positions from a 2004 Oklahoma Attorney General Opinion. In selecting only parts of the Opinion, and quoting even those parts incompletely or out of context, the Letter paints an inaccurate picture of the Attorney General's Opinion. An excerpt from the Attorney General's Opinion, and its final conclusions, is set forth below:

> [A]ny requirement that individual agreements or compacts negotiated by the Governor on behalf of the State with other sovereigns, such as Indian tribes, be approved by the Legislature would violate the principles of separation of powers. Any requirement that individual negotiated agreements have to be approved by the Legislature prior to becoming effective would. . .have the Legislature ***carrying out*** legislative policy and ***applying it to various conditions***. Secondly, the power to approve individual contracts would result in complete control by the Legislature, and. . .result in a vehicle "by which the executive department is being subjected to the coercive influence of the legislative department."
>
> In reaching this conclusion, we note that the Oklahoma Constitution does not contain a Treaty Advice and Consent Clause like Article II, Section 2 of the United States Constitution, which empowers the President to make Treaties "by and with the Advice and Consent of the Senate."
>
> Finally, a requirement that each agreement negotiated by the Governor must be approved by the entire Legislature would place the Legislature not in a cooperative role, but in complete control over the approval process. Such legislative power . . . would violate the Separation of Powers provision of the Oklahoma Constitution.
>
> It is, therefore, the official Opinion of the Attorney General that:
>
> The Separation of Powers provisions in the Oklahoma Constitution, including Article IV, Section 1, are not violated when, without legislative approval of the specific agreements:
>
> a. the Governor, under the powers vested in the Governor under Article VI, Section 8 of the Oklahoma Constitution, to conduct "all intercourse and business of the State with other states and with the United States," negotiates an agreement with other states or with the United States, or
>
> b. the Governor, under the authority vested in the Governor at 74 O.S. 2001, § 1221(C)(1), enters into a cooperative agreement (sometimes referred to as a compact) on behalf of the State with a federally recognized Indian Tribal Government within this State.

Oklahoma Attorney General Op. No. 2004 OK AG 27 (Aug. 26, 2004) (citations omitted). Accordingly, the legislature does not have a role in approving state-tribal compacts; the Governor has the exclusive authority.

II. The Indian Gaming Regulatory Act (IGRA) Controls the Procedures for Negotiating Gaming Compacts and the Scope of Their Contents.

It is a well-established principle that federal law, not state law, sets the standards for gaming compact negotiations. The McCall/Treat Letter fails to consider the preemptive effects of federal law and the norms that necessarily inform the limited role of Oklahoma law when assessing the legitimacy of gaming compacts negotiated by the Governor. The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701 *et seq*., not state law, controls the negotiation procedures and the scope of permissible subjects of compacts.

1. IGRA controls the procedures for negotiating gaming compacts.

Congress enacted IGRA in 1988, shortly after the Supreme Court's decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). In *Cabazon*, the Court held that Indian tribes were free to offer gaming on tribal lands subject only to federal regulation. The Court also held that state regulation did not control the scope of tribal gaming.

IGRA was Congress' compromise to the difficult questions involving Indian gaming. IGRA was enacted to provide "a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments" and "to shield [tribal gaming] from organized crime and other corrupting influences to ensure that the Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. § 2702(1)–(2). IGRA is an example of "cooperative federalism" in that it clearly outlines the roles of the competing sovereign interests—the federal government, state governments, and Indian tribes.

The federally-mandated design of a state-tribal compact is key to understanding the various roles of the three sovereigns regarding Class III gaming under IGRA. The federal government permits states and Indian tribes to develop joint regulatory schemes through the compacting process, but only pursuant to IGRA standards. *See Keweenaw Bay Indian Community v. U.S.*, 136 F.3d 469, 472 (6th Cir. 1998). Section 11(d)(3)(A) of IGRA describes the process whereby the Indian tribe and the state may commence negotiations leading to a tribal-state compact: the tribe must "request" that the state "enter into negotiations," and, on receiving such request, the state must proceed to "negotiate with the Indian tribe in good faith." 25 U.S.C. § 2710(d)(3)(A). *See Kan. ex rel. Schmidt v. Zinke*, 861 F.3d 1024 (10th Cir. 2017) ("IGRA itself imposes an obligation on the State to negotiate a gaming compact in good faith at the Tribe's request. . .The only condition under the statute triggering this obligation is a tribe's request to enter into such negotiations.").

The McCall/Treat Letter omits this federal requirement to negotiate a compact pursuant to IGRA standards. The Letter states that "[r]egarding state-tribal gaming law, the records of the Legislature and the law itself clearly show state-tribal gaming was always intended to be handled jointly, by both the legislative and executive branches of the State of Oklahoma. On this matter and many others, **the legislative branch sets the policy and the executive branch executes the**

policy." (emphasis added). This assertion is flatly erroneous. Section 11(d)(1) of IGRA unequivocally declares that "[c]lass III gaming activities" are "lawful. . .only if such activities are. . .conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State." 25 U.S.C. § 2710(d)(1). Moreover, a compact takes effect *only* when approved by the Secretary of the Interior. 25 U.S.C. § 2710(d)(3)(B). When a compact is negotiated and approved pursuant to the process outlined in the act, IGRA – not the state – legalizes gaming by the tribe.

In sum, IGRA, as mandated by the *Cabazon* court, specifically rejects the notion that state law controls the procedures for authorizing gaming on Indian lands.

2. IGRA defines the scope of appropriate subject matter for Tribal-State compact negotiations.

The McCall/Treat Letter suggests that the subject compacts are not properly negotiated since "Event Wagering", as defined in the new compacts, is not specifically permitted as a covered game in the Oklahoma gaming statute. This view is also wrong. Instead of adopting state law as the standard for Indian gaming, IGRA adopts an approach that looks to broad classes of gaming that are permitted within the negotiating state. IGRA states that if a type of gaming is permitted within a state, any similar type of gaming is permitted as part of the compact negotiation process**.** 25 U.S.C. § 2710(d)(1)(B); *see also N. Arapaho Tribe v. State of Wyoming*, 389 F.3d 1308, 1313 (10th Cir. 2004) (holding that a state "ha[s] a duty to negotiate for terms beyond those [state] law expressly permits"). In fact, the Governor's obligation to negotiate in good faith with the tribes requires meaningful effort to negotiate over subject matters permitted by IGRA and of interest to the tribes. *See N. Arapaho Tribe*, 398 F.3d at 1313 ("When a state refuses to negotiate beyond state law limitations concerning a game that it permits, the state cannot be said to have negotiated in good faith under the IGRA given the plain language of the statute.").

IGRA provides that gaming activities that may be included in a compact are those types of general categories of games that a state "permits. . .for any purpose by any person, organization, or entity." 25 U.S.C. § 2710(d)(1)(B). This provision is a form of 'national treatment' clause designed to protect tribes from discriminatory treatment in regards to gaming. The plain language of § 2710(d)(1)(B) is best understood as allowing class III gaming compacts in states that permit that kind of gaming for at least one purpose, by at least one person, organization, or entity. *See e.g.*, *American Greyhound Racing, Inc. v. Hull*, 146 F. Supp. 2d 1012, 1067 (D. Ariz. 2001); *Dalton v. Pataki*, 835 N.E.2d 1180, (N.Y. 2005), cert. denied, 546 U.S. 1032 (2005). Under §2710(d)(1)(B), the state may grant a tribe exclusive Class III gaming rights if state law permits *similar* Class III gaming for at least one purpose for at least one person, organization, or entity.

In sum, for an Indian tribe to lawfully operate a particular form of gaming, IGRA only requires that "such gaming" be permitted "for any purpose by any person, organization, or entity." 25 U.S.C. § 2710(d)(l)(B). And since Congress structured the requirement to provide states and tribes with maximum flexibility to fashion a Class III gaming compact, *see Artichoke Joe's v. Norton*, 216 F. Supp. 2d 1084, 1122–23 (E.D. Cal. 2002), if the State of Oklahoma permits even one person to engage in a similar form of gaming, then that form of gaming, in its various iterations, may be made available to the tribe through the compact negotiating process.

III. "Event Wagering" is Already Permitted in Oklahoma.

In Oklahoma, pari-mutuel betting on events where the physical skills of a participant are the subject of betting is already broadly regulated and permitted. The subject compacts define "Event Wagering" as "the placing of a wager on the outcome of a Sport event, including E-Sports, or any other events." The new compacts further define a "Sport" as the following:

> [A] contest (i) having a defined set of rules, (ii) requiring participant skill, (iii) requiring physical skill, (iv) having a broad public appeal, and (v) having achieved institutional stability where social institutions have rules which regulate it, stabilizing it as an important social practice. This shall include, but not be limited to, football, basketball, baseball, golf, tennis, hockey, boxing, mixed martial arts, wrestling, athletic contests recognized by the Olympics, and car racing.

Although all sports, and other events, have not been the subject of gaming in Oklahoma in the past, this kind of gaming has long been specifically authorized in Oklahoma law.

1. Horse racing—a type of event wagering—is widely permitted in Oklahoma.

Speaker McCall and President Pro Tempore Treat ignore the State Tribal Gaming Act, 3A O.S. §§ 261-281, which specifically provides for wagering on such sporting events. The State Tribal Gaming Act states that the "Oklahoma Horse Racing Commission shall approve the transfer of purse money generated for races for Thoroughbred horses, races for Quarter Horses or races for Paint and Appaloosa horses pursuant to this section." 3A O.S. § 265. Similarly, the State Tribal Gaming Act provides for wagering on horse races not located in Oklahoma. Section 266 states:

> Notwithstanding the provisions of Section 205.7 of Title 3A of the Oklahoma Statutes, an organization licensee may conduct, for any year in which the organization licensee meets the requirements to conduct authorized gaming, an unlimited number of out-of-state full card simulcast races for an unlimited number of days during that calendar year. An organization which is licensed under Section 208.2 of Title 3A of the Oklahoma Statutes may also conduct an unlimited number of out-of-state full card simulcast races for an unlimited number of days, provided that such licensee conducts, in such year, no less than four hundred (400) total races, which shall include conducting no fewer than an average of four (4) races per day for Thoroughbred horses.

3A O.S. § 266. In addition, the Oklahoma Horse Racing Act, 3A O.S. §§ 200–282, provides for a full authorized system of pari-mutuel wagering. *See* 3A O.S. § 205.6.

2. To the extent state law is construed to override IGRA, such law is preempted.

The Tenth Circuit has specifically rejected arguments like those advanced in the McCall/Treat Letter. These arguments seek to entrench state law as the dominant framework for the negotiating scope of tribal compacts.

In *N. Arapaho Tribe*, 389 F.3d at 1311-12, the court stated:

> The state argues that the district court erred in concluding that IGRA requires the state to negotiate with the Tribe. . .without regard to the limitations of Wyoming law. If the state's approach were correct, however, "the compact process that Congress established as the centerpiece of the IGRA's regulation of Class III gaming would thus become a dead letter; there would be nothing to negotiate, and no meaningful compact would be possible." *Mashantucket Pequot Tribe*, 913 F.2d at 1031.

Moreover, the court in *Dewberry v. Kulongoski*, 406 F. Supp. 2d 1136, 1152–53 (D. Or. 2005), stated:

> An argument similar to plaintiffs was raised recently in *Dalton v. Pataki*, 5 N.Y.3d 243, 835 N.E.2d 1180, 802 N.Y.S.2d 72 (N.Y. 2005). There, the New York Court of Appeals addressed the issue of whether the state could allow the governor to enter into tribal-state gaming compacts when the state constitution prohibited commercial gambling generally. *Id.* at 1186. The court rejected the plaintiffs' argument that the state constitution prohibition against commercial gaming rendered class III gaming on Indian lands unlawful, finding that "IGRA does not allow the state to consider the purpose behind the gaming." Id. at 1189. Noting that the statutory language makes clear that class III gaming is permitted on Indian lands "when located in a state that permits such gaming for any purpose by any person," the court held that "**since New York allows <u>some forms</u> of class III gaming – for charitable purposes – such gaming may lawfully be conducted on Indian lands** provided it is authorized by tribal ordinance and is carried out pursuant to a tribal-state compact."

Id. at 1152–53 (emphasis added).

If a type of game is regulated by the state and not otherwise prohibited, it is appropriate for compact negotiations. As stated in *U.S. v. Sisseton-Wahpeton Sioux Tribe*, "the legislative history [of IGRA] reveals that Congress intended to permit a particular gaming activity, even if conducted in a manner inconsistent with state law, if the state law merely regulated, as opposed to completely barred, that particular gaming activity." 897 F.2d 358, 365 (8th Cir. 1990).

3. The Oklahoma Legislature has authorized certain sports betting.

Speaker McCall and President Pro Tempore Treat assert unequivocally that "the Legislature has not yet authorized sports betting in Oklahoma." This is an incomplete representation of the legal state of affairs in Oklahoma. To be sure, the United States Department of the Interior has long recognized that a state is not required to negotiate over a type of game if all forms of that game are prohibited by state law. For example, the "Secretarial Procedures" regulations stated:

> IGRA thus makes it unlawful for Tribes to operate particular Class III games that State law completely and affirmatively prohibits. . .In other words, if a State prohibits **an entire class** of traditional games, it need not negotiate over the particular games within that category. Consequently, such gaming would not be permitted under Secretarial procedures.

63 Fed. Reg. 3289, 3292–93 (Jan. 22, 1998) (emphasis added).

However, Oklahoma has not prohibited the entire class of "Event Wagering." The National Indian Gaming Commission (NIGC) has long recognized "Event Wagering" as an appropriate form of gaming in Oklahoma because event wagering is generally only **regulated**, not prohibited, by Oklahoma law. Almost all tribes in Oklahoma play versions of tournaments as Class III games. As a result, the NIGC has issued several opinion letters stating that under Oklahoma law, tournament play is legal and within the scope of compact negotiations since they are not prohibited by Oklahoma law. The NIGC observes that gambling tournament play is not prohibited in Oklahoma because Oklahoma specifically exempts tournaments from criminal gaming statutes by virtue of 21 O.S. § 981. Further, the NIGC has stated that although tournaments clearly involve gambling that would otherwise constitute prohibited gaming in Oklahoma, since it is an exempted area in Oklahoma for participant betting, it also is an appropriate subject for tribal gaming. In short, because Oklahoma has chosen to exempt tournaments – which may require an entry fee and award a pool prize to individual participants – from the definition of betting under state law, tournaments may be properly authorized for Class III gaming.

4. Athletic events are proper subjects of compact negotiations.

Oklahoma law not only exempts betting on tournaments but also betting on athletic events if done in a pool betting format. 21 O.S. § 981. Participants are allowed to bet on athletic events through pool wagering. Oklahoma's prohibition on betting is not a complete ban but merely a form of strict regulation. The exemptions demonstrate that betting on athletic events is not fully prohibited in Oklahoma. Section 981 states:

> **A "bet" is a bargain in which the parties agree that, dependent upon chance**, or in which one of the parties to the transaction has valid reason to believe that it is dependent upon chance, one stands to win or lose something of value specified in the agreement. **A bet does not include**. . .
>
> > c. **offers of purses**, prizes or premiums to the actual **participants in public and semipublic events**, as follows, to wit: **Rodeos**, animal shows, hunting, fishing or shooting competitions, expositions, fairs, **athletic events**, tournaments and other shows and contests where the participants qualify for a monetary prize or other recognition. This subparagraph further excepts an entry fee from the definition of "a bet" as applied to enumerated public and semipublic events.

21 O.S. §981 (emphasis added).

Under established IGRA precedent and Oklahoma law, it is clear that athletic events are proper matters for compact negotiations should the Tribes and State choose to negotiate such matters. The arguments presented by Speaker McCall and President Pro Tempore Treat are factually incorrect and legally infirm. The Oklahoma Governor is compelled, pursuant to his obligation to deal with the Tribes in good faith, to negotiate "Event Wagering" issues at the Tribes' request, as was the case in these compacts. It is an unmistakable error to state so unambiguously, as the McCall/Treat Letter purports to do, that "Event Wagering" is not a proper subject for compact negotiation.

IV. The Compacts Were Flexibly Drafted to Withstand Challenges and Should Be Forwarded to the Secretary of the Interior for Approval.

Had Speaker McCall and President Pro Tempore carefully reviewed the terms of the compacts prior to issuing their respective missives, they might have been assured by the fact that the compacts **on their face** address any concerns about the legality of event wagering. The compacts define "Event Wagering" as "the placing of a wager on the outcome of a Sport event, including E-Sports and daily fantasy sports, or any other events, **to the extent such wagers are authorized by applicable State law**." (emphasis added). If certain event wagering activities are not authorized by applicable State law as Speaker McCall and President Pro Tempore argue, the compacts have anticipated this question. To the degree State law would operate to the contrary, such operation would narrow, not wholly eliminate, the event wagering recognized by the compact.

Moreover, the compacts include severability clauses which allow for the Secretary of the Interior to sever portions of the compact deemed incompatible with IGRA or relevant state law. Part 13.B of each compact states:

> Entire Agreement; Severability. This Compact constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written negotiations. If any clause or provision of this Compact is subsequently determined by any federal court to be invalid or unenforceable under any present or future law, including but not limited to the scope of Covered Games, the remainder of this Compact shall not be affected thereby. It is the intention of the Parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar to such provision as is possible to be legal, valid and enforceable.

In other words, in the unlikely event of a judicial holding that sports betting is per se outside the permissible negotiating scope of Oklahoma tribal-state compacts, such a decision would have no effect on the efficacy of the compacts. The Department of the Interior honored such severability clauses with the original Tribal Gaming Compact. Part 15(D) of the original Compact outlined a termination procedure. Part 15(D) also included a severability provision which read:

> The state hereby agrees that this subsection is severable from this Compact and shall automatically be severed from this Compact in the event that the United States

> Department of the Interior determines that these provisions exceed the states authority under IGRA.

Upon review by the Department of the Interior, the termination provision was deemed improper and, pursuant to the severability clause, independently severed from the Compact. Part 13.D of these compacts mirrors this construction. Accordingly, these compacts were flexibly drafted to accommodate potential challenges.

Therefore, the compacts between the State of Oklahoma and the Otoe-Missouria Tribe, and between the State of Oklahoma and the Comanche Nation, are legally enforceable compacts subject only to the approval of the Secretary of the Interior prior to taking effect. A careful reading of the express terms in the two compacts may have avoided the unfortunately misleading communication from Speaker McCall and President Pro Tempore Treat.

The compacts are valid, with or without the event wagering clause, and the obligations therein are binding to both the State and the Tribes who each must perform their respective contractual obligations.

Conclusion

The right to game on tribal land is a matter of federal law, and a state statute cannot control the scope of compact negotiations. Compact negotiations are both encouraged and mandated on any class of games that are permitted to anyone in the State of Oklahoma. Event Wagering is permitted in the form of horse racing, tournaments, and sporting events in Oklahoma by both individual participants and large groups of gamblers. Such event wagering on local, national, and international events is permitted by Oklahoma law. Denying Tribes the opportunity to engage in event wagering for sports, particularly when certain sports are already the subject of gaming, flies in the face of IGRA and undermines the objectives for which gaming relations have become a central pillar of tribal-state relations.

These compacts between the State and the Otoe-Missouria Tribe and between the State and the Comanche Nation are undeniably a legitimate expression of sovereign-to-sovereign negotiations governed by federal law and concluded pursuant to the prerogative established in the Oklahoma Constitution, which vests the Governor with the sole authority to negotiate with Indian Tribes. Specifically, Article VI, Section 8 of the Oklahoma Constitution empowers the Governor:

> **The Governor shall** cause the laws of the State to be faithfully executed, and **shall conduct in person or in such manner as may be prescribed by law**, all **intercourse and business of the State with other states** and with the United States, and he shall be a conservator of the peace throughout the State.

Id. (emphasis added). Promoting the "business of the State" with other sovereigns and serving as "a conservator of the peace" is exactly what these compacts have done.

EXHIBIT 2 to
Declaration of Klint A. Cowan in Support of Defendants Chief Bunch and Mekko Givens' Motion for Summary Judgment

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 20 2005

Honorable Ron Suppah
Chairman, Confederated Tribes of the
Warm Springs Reservation of Oregon
P.O. Box C
Warm Springs, Oregon 97761

Dear Chairman Suppah:

On April 8, 2005, we received the Tribal-State Compact for the regulation of Class III Gaming between the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes) and the State of Oregon (State), executed on April 6, 2005 (Compact). Under the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. § 2710(d)(8)(C), the Secretary of the Interior (Secretary) may approve or disapprove the Compact within forty-five days of its submission. Under IGRA, the Secretary can disapprove the Compact if she determines that 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 the submission of additional documentation submitted by the parties and some third parties. For the following reason, the Compact is hereby disapproved.

Discussion

Article V(C) of the Compact authorizes a gaming facility on the Cascade Locks Land, "provided that the federal government takes the Cascade Locks Land into trust for the Tribes for gaming purposes pursuant to Section 20(b)(1)(A) of IGRA, 25 U.S.C. § 2719(b)(1)(A)." Section 2710(d)(8)(A) of IGRA authorizes the Secretary "to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming *on Indian lands of such Indian tribe*." This section does not authorize the Secretary to approve a compact for the conduct of Class III gaming activities on lands that are not now, and may never be, Indian lands of such Indian tribe.

In addition, IGRA requires that gaming may only occur on lands subject to the tribe's jurisdiction and over which the tribe exercises governmental power. Currently, the Cascade Locks Land is not currently held in trust for the benefit of the Tribes and will have to undergo a rigorous process under 25 C.F.R. Part 151 before a decision can be made regarding whether to take the land into trust. In addition, compliance with the requirements of Section 20(b)(1)(A) of IGRA will have to be addressed before the land is eligible for gaming. This provision of IGRA requires a Secretarial determination, following consultation with appropriate State and local

EXHIBIT 2

officials, including officials of nearby tribes, that a gaming establishment on the newly-acquired trust lands is in the best interest of the Tribes and their members, and not detrimental to the surrounding community. After this determination is made, the Governor of the State must decide whether he will concur in the Secretary's determination. Therefore, approval of the Compact before the Cascade Locks Land is taken into trust would violate Section 2710(d)(8)(A) of IGRA, and thus, the Compact must be disapproved.

We are aware that the Department has previously approved compacts for the regulation of class III gaming activities before the specified lands qualified as Indian lands under IGRA. However, on closer examination of the statute, we have concluded that the Secretary's authority to act on proposed compacts under 25 U.S.C. § 2710(d)(8)(A) is informed by Section 20 of IGRA. Thus, the proposed gaming lands are subject to a two-part determination and State Governor concurrence under section 20. These two conditions must be complete before Departmental action on a compact can occur.

This decision does not address the other terms and conditions embodied by the proposed compact. The Department is supportive of the efforts of the Tribes and the Governor to discuss Indian gaming. The Department is encouraged by the prospects that there is a foundation for mutual agreement on these issues at some point in the future.

Only after the Tribes have acquired the Cascade Locks Land into trust, will the Department consider the terms and conditions of a timely submitted compact pursuant to the applicable provisions of IGRA. Until then, we trust that the Warm Springs Tribes will continue to engage in Class III gaming activities on its reservation.

We regret that our decision could not be more favorable at this time. A similar letter is being sent to the Honorable Theodore R. Kulongoski, Governor, State of Oregon.

Sincerely,

James E. Cason

James E. Cason
Associate Deputy Secretary

EXHIBIT 2

TRIBAL-STATE COMPACT FOR REGULATION OF CLASS III GAMING BETWEEN THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON AND THE STATE OF OREGON

Disagreed

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TRIBAL-STATE COMPACT FOR REGULATION OF CLASS III GAMING BETWEEN THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON AND THE STATE OF OREGON

ARTICLE I - TITLE

This Compact is made by and between the Confederated Tribes of the Warm Springs Reservation of Oregon, a federally-recognized Indian tribe (hereinafter "Tribe"), and the State of Oregon acting by and through the Governor (hereinafter "State"), and pertains to Class III gaming to be conducted on lands pursuant to the Indian Gaming Regulatory Act, 25 USC § 2701 *et seq.* ("IGRA") . The terms of this Compact are unique to the Tribe. The authorization of Class III Gaming pursuant to this Compact is contingent upon the Tribe's successful application to have the Cascade Locks Land (as defined in this Compact) taken into trust for the Tribe to use for Class III Gaming under IGRA pursuant to 25 USC § 2719(b)(1)(A).

ARTICLE II – RECITALS

A. The Parties.

1. The Tribe is a federally-recognized Indian tribe and is the beneficial owner of, and government for, the trust lands of the Tribe located in the State of Oregon.

2. The Tribe is the legal successor-in-interest to the seven tribes and bands of Wasco and Walla-Walla Indians signatory to the Treaty with the Tribes of Middle Oregon of June 25, 1855, 12 Stat. 951 (the "1855 Treaty"). In the 1855 Treaty the signatory tribes ceded to the United States title to their aboriginal homelands along the Columbia River and its Oregon tributaries, the Hood, Deschutes and John Day rivers, as well as other portions of north central Oregon, totaling approximately ten million acres.

3. The State and the Tribe are separate sovereigns and each respects the laws of the other sovereign.

4. The State's public policy concerning gaming is reflected in the Constitution, statutes and administrative rules of the State, which, at the time of execution of this Compact, authorize a variety of games classified as Class III Gaming under IGRA.

5. The Tribe's public policy, as reflected in its Constitution and Bylaws, includes the powers of the Tribal Council to negotiate with state government, manage the economic affairs of the Tribe and protect the health, security and general welfare of the members of the Tribe.

6. The Tribe is authorized to act by and through ordinances and resolutions adopted by its Tribal Council, subject to the referendum powers of the members of the Tribe, under the Tribe's Constitution and Bylaws adopted pursuant to the Indian Reorganization Act, 25 USC §§ 461 *et seq*.

7. The State of Oregon is authorized to act by and through the Governor of the State.

B. IGRA.

1. The United States Congress enacted IGRA in 1988.

2. IGRA sets forth federal policy regarding Indian gaming and provides a statutory basis for the operation of Class III Gaming by the Tribe as a means of promoting tribal economic development, self-sufficiency, and strong tribal government.

3. IGRA provides that Class III Gaming activities are lawful on tribal lands only if such activities are:

a. located in a state that permits such gaming for any purpose by any person, organization or entity;

b. authorized by tribal ordinance;

c. conducted in accordance with a tribal-state compact; and

d. conducted on "Indian lands" within the meaning of IGRA.

4. IGRA creates a framework for agreements between Indian tribes and states regarding the regulation of Class III Gaming as defined in IGRA.

5. IGRA provides a statutory basis for the conduct and regulation of gaming by the Tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Tribe is the primary beneficiary of the gaming revenues, and to ensure that gaming is conducted fairly and honestly by both the operators and players.

C. Regulatory Roles.

1. The success of tribal gaming depends upon public confidence and trust that the Tribal Gaming Operation is conducted with fairness, integrity, security and honesty, and is free from criminal and corruptive influences.

EXHIBIT 2

2. Public confidence and trust can be maintained only if there is strict compliance with all laws and regulations related to the Tribal Gaming Activities, by all persons involved in the Tribal Gaming Operation.

3. The relationship between the State and the Tribe rests on mutual trust and the recognition that each has a duty to protect the gaming public through separate, appropriate responsibilities during the life of current and future compacts.

4. This Compact details the division of regulatory, oversight and monitoring roles agreed to by the parties.

5. The division of regulatory, oversight and monitoring roles in this Compact reserves for the Tribe the primary responsibility for regulating Class III Gaming on tribal land; however, this Compact provides the State of Oregon, acting through the Oregon State Police, with important monitoring and oversight responsibilities to assure the fairness, integrity, security and honesty of the Class III Gaming.

6. The Tribe and the State agree that the state functions of monitoring and oversight of tribal gaming operations in the State of Oregon will be funded fully by the Oregon Indian gaming tribes, as more fully described in this Compact.

D. Class III Gaming on the Tribe's Reservation.

1. On January 6, 1995, the Tribe and the State executed the Tribal-State Government-to-Government Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon, which was approved by the Secretary of Interior, effective March 13, 1995, and has been amended by the parties from time to time (the "Reservation Compact").

2. The Reservation Compact provided for Class III gaming to take place at the Tribe's Kah-Nee-Ta Lodge or at a "Permanent Gaming Facility" on the Warm Springs Reservation.

3. The Tribe established a Gaming Facility at Kah-Nee-Ta Lodge and is currently conducting Class III Gaming there, but never established a "Permanent Gaming Facility."

4. The Reservation Compact provided that the Tribe waived any right to game at another location or facility for a period of three years, and also provided that either party could request renegotiation to amend, repeal or replace the Reservation Compact.

5. The Tribe has offered to close the Class III Gaming facility at the Kah-Nee-Ta Lodge as more fully described in this Compact.

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E. Hood River Lands.

1. In general, IGRA allows Class III Gaming only on lands that were held in trust by the United States for the benefit of a tribe prior to October 17, 1988, unless certain exceptions are satisfied. One of the exceptions in IGRA that permits Class III Gaming on lands acquired after October 17, 1988 by the United States applies if the Secretary of the Interior determines that gaming on such land is in the best interest of the tribe and its members and would not be detrimental to the surrounding community, and if the Governor of the State concurs in that determination.

2. The Tribe claims the right under IGRA to conduct Class III Gaming and to negotiate with the State for a Class III Gaming facility on certain land which was taken into trust by the United States for the benefit of the Tribe before 1988 and is located just outside of the city limits of the City of Hood River (the "Hood River Trust Land") and within the Columbia River Gorge National Scenic Area, and which is shown in Exhibit A.

3. The Tribe has also acquired the parcels of land shown in Exhibit B as the Bryant Property tax lots 100 and 101, the Houston Property and the Christian Futures Property, which are located in the vicinity of the Hood River Trust Land (the "Hood River Fee Lands"). The Tribe is seeking to have the Hood River Fee Lands taken into trust by the United States for the benefit of the Tribe.

4. The Tribe also claims ownership of the portion of the Historic Columbia River Highway that passes through the Hood River Trust Land, which claim the State disputes.

5. The State has established and manages the Historic Columbia Highway State Trail, a portion of which, including the Mark O. Hatfield Trailhead, is located close to the Hood River Trust Land and the Hood River Fee Lands. On behalf of the State, the Governor believes that commercial development in the vicinity of the Mark O. Hatfield Trailhead would be inconsistent with, and not in the best interest of, the recreational use and purpose of the trail.

6. The Hood River Trust Land and Hood River Fee Lands are scenic lands located within the Columbia River Gorge National Scenic Area. The Hood River Trust Land and Hood River Fee Lands are not located within the city limits or urban growth boundary of the City of Hood River. The Hood River Fee Lands are subject to the Gorge Act's land management plan, 16 USC § 544d, although the Hood River Trust Land was exempted from the Gorge Act when enacted because it is Indian trust land. 16 USC § 544(o)(7).

7. Hood River County and the City of Hood River are opposed to the development of a gaming facility on the Hood River Trust Land or Hood River

Fee Lands, as demonstrated by correspondence from the City of Hood River and Hood River County Board of Commissioners Resolution Nos. 824 and 1029, attached to this Compact as Exhibits C and D, respectively.

8. On behalf of the State, the Governor is opposed to the development of a gaming facility on the Hood River Trust Land or the Hood River Fee Lands and does not believe that it would be in the best interests of the surrounding community or the State for a gaming facility to be located on those lands.

9. The Tribe has offered to forego any right to conduct Class III Gaming or to negotiate with the State for a compact authorizing Class III Gaming on the Hood River Trust Land as qualified Indian land under IGRA if another suitable location is agreed upon by the Tribe and the State. The Tribe has proposed certain lands within the city limits and urban growth boundary of the City of Cascade Locks, as described in Exhibit E (the "Cascade Locks Land"), as a suitable location. On March 29, 2004, the Tribe formally requested that the State enter negotiations with the Tribe, pursuant to IGRA, for a gaming compact authorizing Class III Gaming on either the Hood River Trust Land or the Cascade Locks Land.

10. The City of Cascade Locks is a small, rural, economically-depressed community approximately forty-two miles east of Portland, Oregon. Cascade Locks is located in Hood River County seventeen miles west of the Tribe's Hood River Trust Land and Hood River Fee Lands. Cascade Locks is also thirty-eight miles north of the Tribe's Warm Springs Indian Reservation. Cascade Locks is within the area ceded to the United States by the Tribe in the 1855 Treaty. As described in Section E(14) of this Article, tribal members exercise important treaty rights in the area of Cascade Locks.

11. Hood River County and the City of Cascade Locks support the development of a gaming facility on the Cascade Locks Land, as demonstrated by Hood River County Board of Commissioners Resolution No. 1029 (June 4, 2001) and Cascade Locks City Council Resolution No. 856 (January 11, 1999), attached to this Compact as Exhibits D and F, respectively.

12. Based upon all the circumstances currently known or anticipated, including final resolution of issues regarding location of a gaming facility and title to and protection of certain lands in the Columbia River Gorge without costly or prolonged litigation, the Governor, on behalf of the State, believes that it is not detrimental to the surrounding community and is in the best interests of the Tribe and the State to negotiate a compact authorizing Class III Gaming on the Cascade Locks Land rather than the Hood River Trust Land, conditioned upon the Cascade Locks Land being taken into trust by the United States for the benefit of the Tribe for gaming purposes and subject to all of the agreements and promises contained in this Compact.

13. As part of this negotiated agreement authorizing Class III Gaming on the Cascade Locks Land, all as more fully described in this Compact, the Tribe has agreed:

a. to convey to the State a perpetual conservation easement over the Hood River Trust Land to prevent gaming or other future development of that land (except limited recreational development);

b. to convey to the State the greatest interest legally permissible to the Hood River Fee Lands; and

c. to convey to the State a perpetual road easement in order to settle the parties' dispute regarding title to the Historic Columbia River Highway.

14. Cascade Locks is part of the aboriginal homeland of the 1855 Treaty signatory tribes and is within the exterior boundaries of the territory ceded to the United States in Article 1 of the Treaty. Warm Springs tribal members exercise off-reservation fishing rights in the Columbia River at Cascade Locks pursuant to Article 1 of the 1855 Treaty. See *United States v. Oregon*, 718 F.2d 299 (9th Cir. 1983). Such treaty fishing rights are federally-protected property rights and include a right of access to the fishing grounds over private property. See *United States v. Winans*, 198 U.S. 371 (1905). Cascade Locks is also the location of a Columbia River "Treaty Fishing Access Site" created by Congress for the exclusive use of Warm Springs and three other Columbia River treaty fishing tribes. P.L. 100-581, Title IV.

15. The Tribe has identified the following features of the Cascade Locks Land that makes it uniquely appropriate for the development of a gaming facility pursuant to the negotiated terms of this Compact:

a. the Cascade Locks Land is located within the Tribe's aboriginal lands and within the Tribe's 1855 Treaty ceded territory;

b. the Cascade Locks Land is located on the Columbia River where tribal members exercise treaty fishing rights as noted in *United States v. Oregon*, 718 F.2d 299 (9th Cir. 1983);

c. the City of Cascade Locks is a rural, economically-depressed community that supports the development of a gaming facility;

d. Hood River County supports the development of a gaming facility on the Cascade Locks Land;

e. developing a gaming facility on the Cascade Locks Land allows the Tribe to resolve the issue of the location of the Tribe's gaming facility

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and to resolve other issues regarding land in Hood River County without costly or prolonged litigation;

f. the Cascade Locks Trust Land is industrial land suitable for the development of a gaming facility within the urban growth boundary of the City of Cascade Locks;

g. the Cascade Locks Land is approximately forty-two miles east of Portland, Oregon, along Interstate 84; and

h. the Cascade Locks Land is seventeen miles west of the Tribe's Hood River Trust Land and Hood River Fee Lands and is thirty-eight miles north of the Tribe's Warm Springs Indian Reservation.

F. Columbia River Gorge.

1. The Tribe and the State share an interest in protecting and enhancing the scenic, cultural, recreational and natural resources of the Columbia River Gorge National Scenic Area and desire to minimize any possible adverse impact of the Gaming Facility on the Scenic Area.

2. This Compact allows the Tribe and the State to protect perpetually the Hood River Trust Land and Hood River Fee Lands by preventing the construction of a gaming facility or other development (except limited recreational development) on those lands.

3. The Cascade Locks Land is currently zoned as industrial land and is located in the Port of Cascade Locks Industrial Park, which is within the boundaries of the City of Cascade Locks and the Cascade Locks Urban Area as defined in 16 USC § 544b(e), and therefore is not subject to the Gorge Act's land management plan, 16 USC § 544d(c)(5)(B).

4. Development of the Gaming Facility in the Cascade Locks Urban Area furthers the Gorge Act's purposes of encouraging economic development in urban areas within the Columbia River Gorge that is consistent with protection and enhancement of the Columbia River Gorge's scenic, cultural, recreational and natural resources. 16 USC § 544(a)(2).

5. Provisions of this Compact are intended to ensure that development of a gaming facility on the Cascade Locks Land is consistent with the environmental sensitivity and recreational uses of the Columbia River Gorge National Scenic Area. In particular, this Compact dedicates a portion of the revenue from the Gaming Facility to preserving, protecting and enhancing natural and cultural resources within the Scenic Area.

G. Economic Benefits to the Community.

1. The Tribe intends to construct a resort on the Cascade Locks Land that is of the highest quality. In addition to gaming, the resort is expected to include a hotel, a spa, several restaurants, several meeting and entertainment venues and an interpretive nature trail. An outline of the footprint and a conceptual rendering of the Tribe's current plans for the Resort are attached as Exhibits G and H, respectively.

2. Economic development in this area of rural Oregon is a priority of the State, the Tribe and local government in Hood River County. The unemployment rate in rural Oregon, including Hood River County and on the Tribe's Warm Springs Reservation, is significantly higher than the nationwide and statewide unemployment rates.

3. It is anticipated that construction of the Resort will result in over four hundred temporary construction jobs and approximately one thousand three hundred ongoing jobs at the Resort.

H. Economic Benefits to the Tribe.

Under Article XV, Section 4(12) of the Oregon Constitution, the Oregon legislature may not authorize non-Indian casinos in the State of Oregon. However, pursuant to federal law, all nine of the federally-recognized Indian tribes in Oregon operate gaming facilities on lands that qualify for gaming under IGRA without the two-part determination of 25 USC § 2719(b)(1)(A). The Cascade Locks Land is located approximately forty-two miles east of Portland, Oregon along Interstate 84. The terms of this Compact and the exclusive rights that the Tribe will enjoy will provide a significant economic benefit to the Tribe. The revenue generated by this Gaming Facility is projected to be a substantial portion of the Tribe's revenues. In consideration for the economic benefits and exclusive rights provided by this Compact, for the right to conduct Class III Gaming on the Cascade Locks Land with the requested scope of Class III Gaming, for the perpetual nature of this Compact, for the resolution of issues regarding the Tribe's right to conduct Class III Gaming on the environmentally-sensitive Hood River Trust Land and the ownership of the portion of the Historic Columbia River Highway passing through the Hood River Trust Land without costly or prolonged litigation, for a compact that authorizes Class III Gaming at an economically-desirable location, and for the other meaningful concessions offered by the State in the course of good faith negotiations, the Tribe has agreed to share, on a sovereign government-to-government basis, a portion of its revenues from the Gaming Facility, as more fully described in this Compact.

I. Concurrence.

If in connection with the fee-to-trust process for the Cascade Locks Land, the Secretary of Interior and the Governor determine, pursuant to 25 USC § 2719(b)(1)(A), that a gaming establishment on the Cascade Locks Land is in the best interest of the Tribe and its members, and that a gaming establishment at the Cascade Locks Land will not be

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detrimental to the surrounding community, then based on all of the agreements and promises contained in this Compact and satisfaction of any conditions precedent contained herein, the Governor will concur in taking the Cascade Locks Land into trust.

In consideration of the mutual undertakings and agreements of the parties, including but not limited to those set forth herein, the Tribe and the State agree as follows:

ARTICLE III – DEFINITIONS

Terms defined in singular form may also be used in plural form and vice versa. In addition to any terms that may be defined elsewhere in this Compact, the following terms apply to this Compact and have the following meanings:

A. "Background Investigation" means a security and financial history check for a Tribal Gaming License, whether the applicant is a prospective High Security Employee, Low Security Employee, Primary Management Official or Class III Gaming Contractor.

B. "Business Days" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific time, excluding State of Oregon holidays.

C. "Cascade Locks Land" means the land described in Exhibit E.

D. "Certification" means the inspection process identified in the Minimum Internal Controls used by the State and the Tribe to approve Class III Gaming equipment for use in the Gaming Facility.

E. "Class II Gaming" means "class II gaming" as defined in 25 USC § 2703(7).

F. "Class III Gaming" or "Class III Games" means all forms of gaming that are not class I gaming or class II gaming as defined in 25 USC §§ 2703(6) and (7).

G. "Class III Gaming Contract" means a contract that involves Major or Sensitive Procurements.

H. "Class III Gaming Contractor" is any individual, business or other entity that applies for or is a party to a Class III Gaming Contract.

I. "Consultant" means any person who provides advice or expertise to the Tribe concerning the operation, management or financing of the Tribal Gaming Activities for compensation, except attorneys and accountants performing those functions. "Consultant" may be either an employee of the Tribal Gaming Operation or a Class III Gaming Contractor. "Consultant" does not include a Class III Gaming Contractor engaged for the purpose of training or teaching employees of the Tribal Gaming Operation or the Tribal Gaming Commission if the contract for those services is no greater than ninety (90) consecutive days in duration.

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J. "Controlling interest" means fifteen percent (15%) or more of the equity ownership of a company.

K. "Counter Game" means keno and off-race course pari-mutuel wagering.

L. "Fiscal Year" means the fiscal year of the Tribal Gaming Operation, which consists of a twelve-month period ending on each December 31st or such other twelve-month period designated in writing by the Tribe to the State.

M. "Gaming Area" means any area of the Gaming Facility in which Class III Gaming is conducted, or areas where patrons' transactions related to Class III Gaming are conducted. The Gaming Area includes the cage and adjacent areas that are not separated from the gaming floor by a physical barrier such as a wall, unless otherwise agreed to in writing by the parties to this Compact.

N. "Gaming Complex" means the Gaming Facility and any other functionally-related ancillary facilities (such as lodging, restaurants, gift shops, meeting and entertainment venues, and facilities in which other related activities occur) that are located on the Cascade Locks Land.

O. "Gaming Facility" means any building, structure or grounds used by the Tribe on Cascade Locks Land for Class III Gaming purposes and includes any property used to store Class III Gaming equipment.

P. "Gaming Related Criminal Activity" means any conduct constituting a violation of ORS 167.167 (Cheating) and any other criminal activity involving any controlled item related to, or used in the play of any Class III Gaming. For purposes of this definition, "controlled item" means any item used directly or indirectly in the play of a Class III Game that requires secure storage or restricted access, including but not limited to: Class III playing cards, dice, VLT paper, gaming chips, keno balls, credit/fill slips, hand pay slips, and keys.

Q. "Gorge Act" means the Columbia River Gorge National Scenic Area Act, 16 USC § 544, *et seq*.

R. "Governor" means the Governor of the State of Oregon.

S. "High Security Employee" means any natural person who is an employee of the Tribal Gaming Operation and who participates in the operation or management of the Tribal Gaming Operation. "High Security Employee" includes but is not limited to: Tribal Gaming Operation administrators, managers and assistant managers, Gaming Facility surveillance or security personnel, dealers, croupiers, shift supervisors, cage personnel (including cashiers and cashier supervisors), drop and count personnel, Consultants who are Tribal Gaming Operation employees and who are not Low Security Employees, Primary Management Officials who are Tribal Gaming Operation employees, VLT technicians, junket representatives, information technology staff with

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access to on-line accounting systems, and any other person whose employment duties require or authorize access to areas of the Gaming Facility related to Class III Gaming and which are not otherwise open to the public.

T. "Hood River Fee Lands" means the land shown as the Bryant Property tax lots 100 and 101 , the Houston Property and the Christian Futures Property in Exhibit B.

U. "Hood River Trust Land" means the land shown in Exhibit A.

V. "IGRA" means the Indian Gaming Regulatory Act, 25 USC § 2701, *et seq*.

W. "Key Employee" means any officer or any other person who may substantially affect the course of business, has authority to make decisions, or is in a sensitive position, such as a position that allows access to information or items that may affect the fairness, integrity, security or honesty of the Tribal Gaming Activities, in an organization or corporation that is a Class III Gaming Contractor or applicant for a Tribal Gaming License.

X. "Low Security Employee" means any employee of the Tribal Gaming Operation whose duties require the employee's presence in the Gaming Area but who is not a High Security Employee and who is not involved in the operation of Class III Gaming. "Low Security Employee" includes but is not limited to employees who are Consultants who are Tribal Gaming Operation employees and who otherwise fall within the definition of "Low Security Employee." "Low Security Employee" does not include any employee of the Tribal Gaming Operation who is present in the Gaming Area for the sole purpose of conducting banking activities at the cage and whose duties do not require that employee to enter the cage.

Y. "Major Procurement" means any procurement action, arrangement, transaction or contract between the Tribe, the Tribal Gaming Commission, or the Tribal Gaming Operation and a manufacturer, supplier, Consultant who is not an employee of the Tribal Gaming Operation, Primary Management Official who is not an employee of the Tribal Gaming Operation, or management contractor, for the purchase of goods, services, licenses or systems that may directly affect the fairness, integrity, security or honesty of the Tribal Gaming Operation and administration of the Tribal Gaming Activities but that are not specifically identified as a Sensitive Procurement. "Major Procurements" include but are not limited to, procurement actions, arrangements, transactions or contracts:

1. For any goods, services or systems involving the receiving or recording of number selections or bets in any Class III Gaming, including but not limited to on-line accounting systems, Keno systems, other random number generation systems and off-track betting systems;

2. For any goods, services, or systems used to determine winners in any Class III Gaming;

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3. For purchase, installation, or maintenance of surveillance systems or other equipment used in monitoring Class III Gaming;

4. For licenses to use a patented Class III Game or Class III Game product;

5. For any goods, services or systems that are a part of or related to a computerized system responsible for receiving, processing or recording data from Tribal Gaming Activities or involved in printing or validating tickets; or

6. Involving or requiring commitments by either party to the procurement action, arrangement, transaction or contract such that there would be substantial financial consequences to one of the parties if the procurement action, arrangement, transaction of contract or procurement action is terminated prematurely. All procurement actions, arrangements, transactions and contracts involving consideration or value of $100,000 or more are deemed to result in substantial financial consequences to one of the parties if the procurement action, arrangement, transaction or contract action is terminated prematurely.

Z. "Minimum Internal Controls" means the Tribal/State "Minimum Standards for Internal Controls" attached as Exhibit I and as revised pursuant to Article IX, Section A.

AA. "Net Win" means, for any period, the total amount wagered on Class III Gaming, less total amounts paid out for all customer Class III Gaming winnings, and less total Participation Fees paid to Class III Gaming Contractors so long as the Tribe does not own and could not purchase or lease the same Class III Gaming devices on substantially similar economic terms without paying Participation Fees.

BB. "OSP" means the Gaming Enforcement Division, or that administrative unit, of the Oregon Department of State Police (commonly referred to as the Oregon State Police) established under ORS 181.020, charged with gaming enforcement responsibilities, or its successor agency established by law.

CC. "Owner" means any person or entity that owns five percent (5%) or more of the equity ownership of an entity, alone or in combination with another person who is a spouse, parent, child, or sibling of that person or who is a spouse, parent, child, or sibling of any officer or any person who can substantially affect the course of business, make decisions, or is in a sensitive position in that entity.

DD. "Participation Fees" means the fees paid by the Tribe to Class III Gaming Contractors for the right to lease and offer for use or otherwise offer for use Class III Gaming devices.

EE. "Payment Date" means a date not later than the 150th day following the end of each Fiscal Year.

FF. "Primary Management Official" means any person who:

1. Has executive level management responsibility for part or all of the Class III Gaming, whether as an employee or under a Class III Gaming Contract for management services;

2. Has authority --

a. to hire and fire Class III Gaming supervisory employees; or

b. to set or otherwise establish policy for the Tribal Gaming Operation; or

3. Is the chief financial officer or other person who has financial management responsibility for the Tribal Gaming Operation.

GG. "Provisional Tribal Gaming License" means a license issued pursuant to Article VII, Section A(8).

HH. "Reservation Compact" means the Tribal-State Government-to-Government Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon dated January 6, 1995, which was approved by the Secretary of Interior effective March 13, 1995, and has been amended by the parties from time to time.

II. "Resort" means the Gaming Complex and any other ancillary facilities marketed in connection with or related to the Gaming Complex, regardless of whether such facilities are located on the Cascade Locks Land, trust land, fee land or leased land. An outline of the footprint and a conceptual rendering of the Tribe's current plans for the Resort are attached as Exhibits G and H, respectively.

JJ. "Revenue Share" means the percentage of Net Win payable by the Tribe as provided in Article XV.

KK. "Sensitive Procurement" means any procurement action arrangement, transaction or contract between the Tribe, the Tribal Gaming Commission or the Tribal Gaming Operation and a manufacturer, supplier, Consultant who is not an employee of the Tribal Gaming Operation, a Primary Management Official who is not an employee of the Tribal Gaming Operation, or management contractor, for the purchase of goods, services or systems related to Tribal Gaming Activities of the kind or in the classes listed below. Sensitive Procurements include but are not limited to procurement actions, arrangements, transactions or contracts for the following goods, services and systems (some of which may otherwise fall within the definition of Major Procurement but are hereby excluded from Major Procurement):

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1. Class III Gaming equipment such as cards, dice, keno balls, roulette wheels, roulette balls, chips, tokens, keno and VLT paper, Class III Gaming tables and table layouts.

2. VLT replacement parts that do not affect the outcome of the game including bill acceptors, printers, monitors, locks and keys for secure storage areas or Class III Gaming devices, individual surveillance cameras, or individual surveillance recording devices.

3. Design of surveillance systems.

4. Class III Gaming consulting or training services, excluding procurement actions, arrangements, transactions or contracts with attorneys, accountants, and political or public relations consultants.

5. Any other goods, services and systems, including goods, services and systems otherwise within the definition of Major Procurement, that OSP and the Tribal Gaming Commission agree are a Sensitive Procurement.

LL. "Table Game" means any individual Class III Game allowed under this Compact except VLTs, keno, off-race course pari-mutuel wagering, and race book.

MM. "Tribal Business Entity" means a business enterprise formed under the Tribe's Federal Corporate Charter or Constitution, a corporation, a partnership, or any other entity formed under tribal, state or federal law, whereby the Tribe conducts business activities.

NN. "Tribal Council" means the governing body of the Tribe as established in Article IV of the Tribe's Constitution and Bylaws.

OO. "Tribal Gaming Activities" means the conduct and regulation of the Tribal Gaming Operation and all other tribal activities directly related to the operation of Class III Gaming.

PP. "Tribal Gaming Commission" or "Commission" means the entity established pursuant to tribal law with independent authority to regulate gaming activities on tribal lands.

QQ. "Tribal Gaming License" means a license issued by the Tribal Gaming Commission to Primary Management Officials, High Security Employees and Low Security Employees in accordance with the requirements of this Compact.

RR. "Tribal Gaming Operation" means the Tribal Business Entity that operates Class III Gaming under tribal authority, and receives revenues, issues prizes and pays expenses in connection with Class III Gaming authorized under this Compact.

SS. "Tribal Gaming Ordinance" means the ordinance adopted by the Tribe to govern the conduct of Class III Gaming, as required by IGRA, including subsequent amendments.

TT. "Tribal Internal Controls" means the internal controls and standards adopted by the Tribal Gaming Commission to regulate the security of the Gaming Facility and the play of Class III Gaming.

UU. "Tribe" means the Confederated Tribes of the Warm Springs Reservation, a federally-recognized Tribe of Indians. As the context of this Compact may require, references to "Tribe" includes the Tribal Gaming Operation, the Tribal Gaming Commission, or a Tribal Business Entity, whichever term gives the intended meaning to the specific provision in which "Tribe" is used.

VV. "Video Lottery Terminal" or "VLT" means any electronic or other device, contrivance or machine where the game outcome decision-making portion of the overall assembly is microprocessor controlled wherein the ticket or game outcome is displayed on a video display screen, electronically controlled physical reels, or other electronic or electro-mechanical display mechanism and that is available for consumer play at the device upon payment of any consideration, with winners determined by the application of the element of chance and the amount won determined by the possible prizes displayed on the device and which awards game credits. Such device also displays both win amounts and current credits available for play to the player.

WW. "Violation" means:

1. Failure to comply with any of the following: applicable federal, state or tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, and Tribal Internal Controls; or

2. A significant failure to comply with, or pattern of failures to comply with, the policies and procedures that implement and apply to the items listed under number 1, above.

ARTICLE IV – PRINCIPLES GOVERNING CLASS III GAMING

The Tribe and the State agree that maintaining the fairness, integrity, security and honesty of the Tribal Gaming Activities is essential both to the success of the enterprise and to satisfy the interests of the State and of the Tribe. The Tribe and the State agree that both have a responsibility to protect the citizens of this State who patronize the Gaming Facility from any breach of security of the Tribal Gaming Activities. Accordingly, all decisions by the Tribe, the Tribal Gaming Commission and the management of the Tribal Gaming Operation, concerning regulation and operation of the Tribal Gaming Facility, including those decisions expressly placed within the Tribe's

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discretion under the terms of this Compact, shall be consistent with each of the following principles:

A. Any and all decisions concerning regulation and operation of the Tribal Gaming Activities, whether made by the Tribe, the Tribal Gaming Commission or the management of the Tribal Gaming Operation, shall reflect the particularly sensitive nature of Tribal Gaming Activities.

B. In order to maintain the fairness, integrity, security and honesty of the Tribal Gaming Activities, the Tribe, the Tribal Gaming Commission and the management of the Tribal Gaming Operation shall work diligently and take all reasonably necessary affirmative steps to prevent cheating and theft, and to protect the Tribal Gamings Operation from the influence of or control by any form of criminal activity ors organization.

C. The fairness, integrity, security and honesty of the Tribal Gaming Activities shall be of paramount consideration in awarding contracts, licensing and hiring employees, and in making other business decisions concerning Tribal Gaming Activities. The Tribe, the Tribal Gaming Commission and the management of the Tribal Gaming Operation shall not make any decisions that compromise the fairness, integrity, security or honesty of the Tribal Gaming Activities.

D. Regulation and operation of the Tribal Gaming Activities shall be, at a minimum, consistent with generally-accepted industry standards and practices, in order to maintain the fairness, integrity, security and honesty of the Tribal Gaming Activities.

E. Both parties recognize that all representatives of both sovereign governments deserve to be treated with dignity and respect and commit that their representatives will conduct themselves in a professional manner in all contacts relating to this Compact.

ARTICLE V - AUTHORIZED CLASS III GAMING

A. Only Compact Between the Tribe and the State. This Compact shall be the only compact between the Tribe and State pursuant to IGRA for purposes of Tribal Gaming Activities at the Tribe's Gaming Facility, and any and all Class III Gaming conducted at the Gaming Facility shall be conducted pursuant to this Compact.

B. Authorized games.

1. Subject to, and in compliance with the provisions of this Compact, the Tribe may engage in the following types of Class III Gaming:

a. VLT games of chance which meet the specifications set forth in Exhibit I,

b. keno,

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c. blackjack and any side-bet variations of blackjack that do not alter the course of play of the game,

d. Spanish 21,

e. craps,

f. roulette,

g. pai-gow poker,

h. Caribbean stud poker,

i. three-card poker,

j. let-it-ride,

k. mini-baccarat,

l. big 6 wheel,

m. off-track pari-mutuel wagering on animal racing, except that no wagers may be accepted by telephone other than to accomplish off-race course pari-mutuel wagering as permitted by Oregon law. Any off-track pari-mutuel wagering held at race courses outside the State of Oregon shall be conducted in compliance with the applicable requirements of the Interstate Horseracing Act of 1978, as amended, 15 USC § 3001-07.

2. The Tribe may submit a written request to the State for authority to engage in any other Class III Gaming, any variations of Class III Gaming previously approved, or any side-bet activities related to Class III Gaming, that have been approved by the Nevada Gaming Control Board. The State shall notify the Tribe in writing of approval or denial of the request within sixty (60) calendar days following its receipt of the request, and the State shall not arbitrarily deny any such request. Any Class III Gaming approved under this subsection is subject to, and must be in compliance with, the provisions of this Compact, including rules, procedures and internal controls at least as stringent as the Minimum Internal Controls.

3. The Tribe shall not offer any type of Class III Gaming other than those authorized pursuant to Sections B(1) and B(2) of this Article.

4. This Article V shall be construed consistent with federal classification of gaming activities. Any gaming activity classified by federal regulation as Class II

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Gaming shall not be subject to the provisions of the Compact except as provided in Section C(4) of this Article and in Article X, Section B(2).

5. The Tribe shall not permit or accept any wagers over the internet or by any telecommunications system or device, except to accomplish off-race course pari-mutuel wagering as permitted by state law.

6. The Tribe shall not offer sports bookmaking.

C. Gaming Location.

1. The Gaming Facility authorized by this Compact shall be located on the Cascade Locks Land, provided that the federal government takes the Cascade Locks Land into trust for the Tribe for gaming purposes pursuant to 25 USC § 2719(b)(1)(A). The Tribe shall conduct the Class III Gaming authorized under this Compact only in the Gaming Facility.

2. In accordance with State policy to authorize only one casino per tribe, the nine Class III Gaming compacts in the State of Oregon each authorize only one Class III casino per tribe. The parties to this Compact agree to continue the "one-casino-per-tribe" policy.

3. As of the execution date of this Compact, the Tribe is conducting Class III Gaming on lands within the Warm Springs Reservation pursuant to the Reservation Compact. The parties plan to execute the Amended and Restated Tribal-State Government to Government Compact for the Regulation of Class III Gaming on the Warm Springs Reservation (the "Amended and Restated Reservation Compact") and to submit the Amended and Restated Reservation Compact to the Secretary of the Interior for approval. The Tribe and the State agree that the Reservation Compact or the Amended and Restated Reservation Compact, whichever is in effect at the time, shall terminate at 12:01 a.m. on the date the Tribe first commences any Class III Gaming at the Gaming Facility, and at the same time the Tribe shall cease all Class III Gaming conducted under the Reservation Compact or the Amended and Restated Reservation Compact, whichever is in effect at the time. The Tribe acknowledges and agrees that the Tribe may maintain only one gaming facility and is not authorized to and shall not conduct any Class III Gaming at any location in the State of Oregon other than at the Gaming Facility. Specifically, the Tribe acknowledges and agrees that the Tribe is not authorized to and shall not conduct any Class III Gaming on lands within the Warm Springs Reservation, nor shall the Tribe conduct any Class III Gaming on any trust lands in Hood River County other than at the Gaming Facility.

4. In order to maintain the "one-casino-per-tribe" policy stated in Section C(2) of this Article, the Tribe agrees to refrain from conducting gaming on the Warm Springs Reservation involving patron play on electronic or electro-

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mechanical machines that are substantially similar in appearance or operation to VLTs or slot machines and to refrain from asserting that such gaming is Class II Gaming. In addition, the Tribe agrees to refrain from denoting, marketing, advertising or taking any other actions to represent that gaming conducted on the Warm Springs Reservation is available at a "casino." The State acknowledges the Tribe's right to conduct bingo and other Class II Gaming on the Warm Springs Reservation, provided however, that such gaming does not involve patron play on electronic or electro-mechanical machines that are substantially similar in appearance or operation to VLTs or slot machines. The parties agree that these conditions are appropriate in order to maintain the "one-casino-per-tribe" policy described in Section C(2) of this Article.

5. The State acknowledges that after the opening of the Gaming Facility and the termination of the Reservation Compact or the Amended and Restated Reservation Compact, whichever is in effect at the time, pursuant to Section C(3) of this Article, the Tribe may seek to become an Oregon Lottery retailer on the Warm Springs Reservation. The parties agree that nothing in this Compact is intended to prevent the State and Tribe from negotiating to amend this Compact to authorize consideration of the Tribe's application to become an Oregon Lottery retailer to the extent authorized by state and federal law.

D. Number of Authorized VLTs.

1. Subject to, and in compliance with the provisions of this Compact, the Tribe is authorized to operate up to but not in excess of one thousand eight hundred (1800) VLTs at the Gaming Facility. Subject to other terms of this Compact, the Tribe may determine in its discretion the location and spacing of VLTs within the Gaming Facility.

2. The Tribe may at anytime after the first year following commencement of Class III Gaming at the Gaming Facility request written authorization from the State to operate up to an additional two hundred (200) VLTs, and the State shall, upon the Tribe's request, authorize in writing up to an additional two hundred (200) VLTs, for a total of two thousand (2000) VLTs, if the State determines that the Tribe is in substantial compliance with the provisions of this Compact.

3. The Tribe may maintain VLTs not in service in on-site storage at the Gaming Facility, so long as the total number of VLTs in operation and in storage does not exceed one hundred ten percent (110%) of the authorized number of VLTs, and so long as the site and manner of storage are consistent with Tribal Gaming Commission policies mutually agreed to by the Tribal Gaming Commission and OSP.

4. For purposes of the calculation of the authorized number of VLTs as provided in this Section D, a VLT providing for play by multiple players shall count as one VLT, as long as the total number of such multiple-player VLTs does

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not exceed one percent (1%) of the total number of authorized VLTs. If the total number of VLTs providing for play by multiple players exceeds one percent (1%) of the total number of authorized Class III Gaming VLTs, then each gaming station at any multiple-player VLTs in excess of one percent (1%) of the total number of authorized VLTs shall be counted as one VLT.

E. Number of Authorized Table Games.

1. Subject to and in compliance with the provisions of this Compact, the Tribe is authorized to operate up to but not in excess of sixty (60) Table Games at the Gaming Facility.

2. The Tribe may at anytime after the first year following commencement of Class III Gaming at the Gaming Facility request written authorization from the State to operate up to an additional ten (10) Table Games, and the State shall, upon the Tribe's request, authorize in writing up to an additional ten (10) Table Games, for a total of seventy (70) Table Games, if the State determines that the Tribe is in substantial compliance with the provisions of this Compact.

F. Introduction of Authorized Games at Gaming Facility.

1. Unless the parties agree to a shorter period, at least sixty (60) calendar days before any Class III Gaming authorized under Section B(1) or Section B(2) of this Article is conducted at the Gaming Facility, the Tribal Gaming Commission shall:

a. Ensure that the Tribal Gaming Operation develops rules and procedures for a system of internal controls for the new Class III Gaming that meets the Minimum Internal Controls.

b. Require that the Tribal Gaming Operation provide appropriate training for all dealers, supervisors, surveillance personnel and any other employees involved in the conduct or regulation of the new Class III Gaming and for the Tribal Gaming Commission, such that those being trained have the knowledge and skills required under typical industry standards for the job function that employee performs, including but not limited to player money management and betting, card counting and detection of cheating methods. The Tribal Gaming Commission shall notify OSP prior to beginning this training and shall provide OSP an opportunity to participate.

c. Ensure that the Tribal Gaming Operation establishes a security and surveillance plan for the new Class III Gaming that meets the Minimum Internal Controls.

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d. Adopt rules of operation for the new Class III Gaming that meet the Minimum Internal Controls, including rules of play and standards for equipment.

e. Notify OSP that the Tribe proposes to offer the new Class III Games to the public and, at the same time, certify in writing that the requirements of Section F(1) have been met, and provide to OSP for review all of the internal controls, regulations, plans, procedures and rules required under this Article.

2. Pre-Introduction Demonstration.

a. Unless the parties agree to a shorter period, at least sixty (60) calendar days before a Class III Game authorized under Section B(1) or Section B(2) of this Article is conducted at the Gaming Facility, the Tribe must demonstrate to OSP's reasonable satisfaction that the Tribe has adopted appropriate internal controls, surveillance plans, game rules and procedures, that meet gaming industry standards for the authorized Class III Game.

b. OSP shall notify the Tribe in writing within five (5) Business Days following the conclusion of the demonstration whether or not OSP is reasonably satisfied that the Tribe has complied with the foregoing obligation. If OSP believes that the Tribe has not adopted appropriate internal controls, surveillance plans, game rules and procedures, that meet gaming industry standards for the authorized Class III Game, then OSP shall provide written notice to the Tribe detailing the perceived deficiencies, and OSP and the Tribe shall meet within 10 Business Days of the notice and mutually address OSP's concerns before a Class III Game authorized under Section B(1) or Section B(2) of this Article is conducted at the Gaming Facility.

c. The parties agree that the rules of operation applicable to Class III Games previously conducted under the Amended and Restated Reservation Compact, including rules of play and standards for equipment, are deemed to meet OSP's reasonable satisfaction for purposes of the same Class III Games that the Tribe is authorized to conduct at the Gaming Facility.

d. Further, the Tribe and State must agree that the Tribal Gaming Commission and OSP are adequately prepared to regulate and monitor the new Class III Game, including agreement that the Tribal Gaming Operation has sufficient adequately-trained personnel to supervise the conduct of the new Class III Game, and that the Tribal Gaming Commission has sufficient adequately-trained personnel to monitor and regulate conduct of the new Class III Game.

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3. The Tribe shall establish wager limits for all Class III Gaming. The Tribe shall establish a maximum wager of five hundred dollars ($500) per hand, including side bets, for each Table Game and Counter Game for the initial ninety (90) day period that the particular type of Table Game or Counter Game iseavailable for play.

4. After the initial ninety (90) day period described in Article V, Section F(3), the Tribe may make written request that OSP authorize a maximum wager of up to one thousand dollars ($1000) per hand, including side bets, for any particular type of Table Game or Counter Game. If OSP concludes that the Tribe is conducting the particular type of Table Game or Counter Game under the conditions described in subsections (a) through (e) of this Section F(4), then OSP shall authorize in writing the requested increase in wager limit for that particular type of Table Game or Counter Game. The Tribe may make written request to OSP for authorization to increase the wager limits during the initial ninety (90) day period, and OSP may in its discretion authorize or deny the requested increase. The following conditions apply to this Section (F)(4) for purposes of wager limit increase authorization:

a. All of the rules, procedures and plans required under Section F(1) of this Article must have been adopted and approved by the Tribal Gaming Commission;

b. All of the rules, procedures and plans required under Section F(1) of this Article must have been acknowledged by OSP as meeting the Minimum Internal Control Standards, and have been implemented by the Tribal Gaming Commission;

c. All training required by the Minimum Internal Controls and the regulations of the Tribal Gaming Commission must be up to date;

d. The Tribal Gaming Commission must have adopted policies and procedures that set forth appropriate sanctions for Violations by any employee of the Tribal Gaming Operation, and those procedures must provide for the Tribal Gaming Operation's investigation of possible Violations by any employee of the Tribal Gaming Operation, and the Tribal Gaming Operation management must have committed in writing to train employees regarding Violations and their consequences and impose the sanctions for Violations against any employee of the Tribal Gaming Operation as required by the Tribal Gaming Commission's policies and procedures;

e. The Tribal Gaming Commission must have adopted and implemented procedures for employees to directly report Violations to the Tribal Gaming Operation; and

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f. The Tribal Gaming Commission must maintain records of investigations of all reports of Violations by any employee of the Tribal Gaming Operation and promptly report the Violations to OSP, including description of the action taken by the Tribal Gaming Commission or Tribal Gaming Operation management to correct the Violation, and the discipline or sanctions imposed.

ARTICLE VI – JURISDICTION

A. In General.

1. The State and the Tribe agree that the Cascade Locks Land is subject to Public Law 83-280 (18 USC § 1162, 28 USC § 1360) because it is Indian country in Oregon not part of the Warm Springs Reservation for purposes of that law. Accordingly, the State shall have criminal jurisdiction over offenses committed by or against Indians and non-Indians on the Cascade Locks Land; the criminal laws of the State shall have the same force and effect on the Cascade Locks Land as they have on non-Tribal lands within the State. Nothing in this Compact shall be interpreted to diminish the criminal jurisdiction of the United States.

2. The Tribe and the State shall have concurrent criminal jurisdiction over offenses committed by Indians on the Cascade Locks Land. Before any Class III Gaming is conducted at the Gaming Facility, the Tribe and OSP shall execute a memorandum of understanding regarding the enforcement of criminal laws on the Cascade Locks Land.

3. The Tribe and the State agree that the Tribe will contact local law enforcement officials for the first response to criminal or public safety issues that are not related to the operating of gaming or that occur other than in the course of the play of games. As between OSP and local law enforcement officials, the Tribe shall notify OSP regarding, and OSP shall have exclusive authority to investigate, violations of state criminal law related to the operations of gaming or that occur in the course of play of Class III Gaming. Nothing in this subsection 3 shall preclude the Tribe from requesting OSP assistance on any criminal or public safety issue if OSP is present at the Resort when assistance is needed.

4. If the Tribe establishes a law enforcement agency that is responsible to investigate criminal law violations at the Cascade Locks Land, the Tribe agrees that the State shall continue to have the authority to investigate possible violations of this Compact or other gaming regulatory matters, or both. The Tribe and the State further agree that their respective law enforcement agencies will cooperate in any investigation that involves or potentially involves both criminal and regulatory violations.

5. The Tribe and the State agree to cooperate in the investigation and prosecution of any Gaming Related Criminal Activity committed at the Resort. The Tribe and the State agree to cooperate in maintaining a state-wide system to identify and monitor persons excluded from any tribal gaming facility in the State of Oregon.

6. In the event a court of competent jurisdiction determines that the Cascade Locks Land is not subject to Public Law 83-280, the parties shall renegotiate the memorandum of understanding described in Section A(2) of this Article as soon as practicable.

B. Except as may be provided in a memorandum of understanding executed in accordance with Section A(2) of this Article, law enforcement officers of the State of Oregon, or officers designated by the State, shall have free access to all areas within the Resort, for the purpose of maintaining public order and public safety, conducting investigations related to possible criminal activity and enforcing applicable laws of the State. The Tribe, or individuals acting on its behalf, shall provide OSP officers access to locked and secure areas of the Resort, including the Gaming Facility, in accordance with the regulations for operation and management of the Tribal Gaming Operation.

C. The Tribe and the State agree that the criminal laws of the State of Oregon that proscribe gambling activities shall apply to any person who engages in the proscribed activities if those activities are not conducted under the authority of the Tribe as provided in this Compact or otherwise under IGRA.

ARTICLE VII – LICENSING

A. Licensing of Gaming Employees.

1. All High Security Employees and Low Security Employees employed in the Gaming Facility shall be licensed by the Tribal Gaming Commission in accordance with the provisions of this Compact.

2. All prospective employees -- whether High Security Employees or Low Security Employees -- shall provide to the Tribal Gaming Commission any required application fees and full and complete information, on forms jointly developed and approved by the Tribal Gaming Commission and OSP, including but not limited to:

a. Full name, including any aliases by which the applicant has been known;

b. Social Security number;

c. Date and place of birth;

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d. Residential addresses for the past five years;

e. Employment history for the past five years;

f. Driver's license number or state-issued or tribal-issued identification card;

g. All licenses issued and disciplinary actions taken by any State agency or local or federal agency or tribal gaming agency;

h. All criminal proceedings, except for minor traffic offenses, to which the applicant has been a party;

i. A current photograph; and

j. Any other information required by the Tribal Gaming Commission or OSP.

3. In addition to the requirements of Section A(2) of this Article, prospective Low Security Employees and High Security Employees shall provide two sets of fingerprints to the State.

4. Background Investigations and Reporting

a. Conduct of Investigations

i. Except as otherwise provided in subsections (ii), (iii) and (iv) of this Section (4)(a), the Tribal Gaming Commission shall conduct a Background Investigation on each prospective Low Security Employee and each prospective High Security Employee, consistent with the requirements of this Compact.

ii. In OSP's discretion, which shall not be unreasonably exercised, OSP may supplement any Tribal Gaming Commission Background Investigation or may conduct a separate Background Investigation.

iii. In the event that OSP is or becomes aware of information concerning the subject of a Background Investigation that suggests the necessity of further investigation, OSP shall immediately notify the Tribal Gaming Commission and provide the Tribal Gaming Commission with the opportunity to consider such information and take further action, unless OSP determines that to do so would hinder an ongoing investigation, or would be detrimental to the fairness, integrity security or honesty of the Tribal Gaming Operation, or would be otherwise contrary to law.

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iv. In the interest of the fairness, integrity, security and honesty of Class III Gaming and on the behalf of the Tribe, OSP shall conduct all Background Investigations on prospective Tribal Gaming Commission members, prospective Low Security Employees and prospective High Security Employees who are family members of the Tribal Gaming Commission, and on any other person the Tribal Gaming Commission identifies as having a potential conflict of interest with a member of the Tribal Gaming Commission. The Tribe shall forward the applicant information to OSP for each prospective Tribal Gaming Commission member, each prospective Low Security Employee and each prospective High Security Employee who is a family member of a Tribal Gaming Commission member. For purposes of this subsection (iv), "family members" include the current or former spouse of a Tribal Gaming Commission member; and the children, siblings and parents of a Tribal Gaming Commission member or of a spouse of the Tribal Gaming Commission member.

v. The Tribal Gaming Commission may request OSP to perform a Background Investigation on any prospective Low Security Employee or prospective High Security Employee and shall forward the application information to OSP for these prospective employees. Upon such request, OSP may conduct the background investigation.

b. Reporting

The party conducting the Background Investigation shall provide a written report to the other party within a reasonable period of time, but in no event later than sixty (60) calendar days following receipt of a completed application without notice to the other party. The party providing the written report shall include in the report the applicant information required under Section A(2) of this Article, the investigative report, criminal history report, credit report, one photograph, available relevant tribal court records, and any other information the reporting party deems relevant.

5. Denial of Tribal Gaming License

a. Except as provided in Section A(6) of this Article, the Tribal Gaming Commission shall deny a Tribal Gaming License to any High Security Employee or Primary Management Official who:

i. Has, within the ten-year period preceding the date of application for a license, been adjudicated a felon on charges other than a traffic offense, whether or not conviction of such a felony

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has been expunged, under the law of any federal, state or tribal jurisdiction, or is the subject of a civil judgment under the law of any federal, state or tribal jurisdiction that is based on a judicial finding of facts that constitute the elements of a felony other than a traffic offense, in that jurisdiction, or if OSP informs the Tribal Gaming Commission that it has determined, based on reasonably reliable information, that the applicant has engaged in conduct that constitutes the elements of such a felony, such that the conduct could be proved by a preponderance of the evidence.

ii. Has been convicted of a crime involving unlawful gambling under the law of any federal, state or tribal jurisdiction, whether or not conviction of such has been expunged, or is the subject of a civil judgment under the law of any federal, state or tribal jurisdiction that is based on a judicial finding of facts that constitute the elements of a crime involving unlawful gambling in that jurisdiction, or if OSP informs the Tribal Gaming Commissions that it has determined, based on reasonably reliable information, that the applicant has engaged in conduct that constitutes the elements of a crime involving unlawful gambling, such that the conduct could be proved by a preponderance of the evidence.

iii. Has associated in a direct business relationship, whether as a partner, joint venturer or employer, with any person who has been convicted of a felony, other than a traffic offense, or a crime involving unlawful gambling, under the law of any federal, state or tribal jurisdiction, or if OSP informs the Tribal Gaming Commission that it has determined, based on reasonably reliable information, that the person has engaged in conduct that constitutes the elements of such a felony or a crime involving unlawful gambling, such that the conduct could be proved by as preponderance of the evidence.

iv. Was employed by any other person who has been convicted of a felony on charges other than a traffic offense, or a crime involving unlawful gambling, under the law of any federal, state or tribal jurisdiction, or if OSP informs the Tribal Gaming Commission that it has determined, based on reasonably reliable information, that the person has engaged in conduct that constitutes the elements of such a felony or crime involving unlawful gambling, such that the conduct could be proved by as preponderance of the evidence, if the prospective employee or official was in any way involved in the criminal activity as its occurred.

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v. Has been subject to convictions or judicial findings of offenses, other than a traffic offense, that demonstrate a pattern of disregard for the law, or if the Tribal Gaming Commission or OSP determines, based on reasonably reliable information, that the applicant has engaged in conduct that demonstrates a pattern of disregard for the law, such that the conduct could be proved by a preponderance of the evidence.

vi. For purposes of this Section A(5), "reasonably reliable information" means information that would be admissible in a civil court proceeding over an objection under the Federal or Oregon Rules of Evidence.

b. The Tribal Gaming Commission shall deny a Tribal Gaming License to any High Security Employee or Primary Management Official if:

i. The applicant fails to disclose any material fact to the Tribal Gaming Commission or OSP or its authorized agents during a Background Investigation; or

ii. The applicant misstates or falsifies a material fact to the Tribal Gaming Commission or OSP during a Background Investigation.

c. The Tribal Gaming Commission may deny a Tribal Gaming License to any prospective High Security Employee for any reason the Tribal Gaming Commission deems sufficient. Such decisions to grant or deny a Tribal Gaming License shall be consistent with the principles set forth in Article IV. In determining whether to deny a Tribal Gaming License to any prospective High Security Employee, the factors to be considered by the Tribal Gaming Commission shall include, but need not be limited to, the following:

i. Whether the applicant has been convicted of any crime (other than a crime listed in Article VII, Section A(5)(a)) in any jurisdiction; or

ii. Whether the applicant has associated with persons or businesses of known criminal background, or persons of disreputable character, that may adversely affect the general credibility, fairness, integrity, security, honesty or reputation of the Tribal Gaming Activities; or

iii. Whether there is any aspect of the applicant's past conduct that the Tribal Gaming Commission determines would adversely

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affect the fairness, integrity, security or honesty of Tribal Gaming Activities.

d. The Tribal Gaming Commission shall deny a Tribal Gaming License to any prospective Low Security Employee who is disqualified according to the criteria set forth in Sections A(5)(a)(i) or (ii) of this Article. The Tribal Gaming Commission may deny a Tribal Gaming License to any Low Security Employee applicant who is disqualified according to any of the criteria set forth in the remainder of this Section A(5). Decisions to grant or deny a Tribal Gaming License shall be consistent with the principles set forth in Article VI.

e. The Tribal Gaming Commission may reject an application if the applicant has not provided all of the information requested in the application.

f. Denial of a Tribal Gaming License by the Tribal Gaming Commission is final.

g. No High Security Employee may receive a Tribal Gaming License from the Tribal Gaming Commission until all Background Investigations required under this Article VII for that High Security Employee are completed, except as otherwise provided in Section A(8) of this Article.

6. Waiver of Disqualifying Criteria.

a. If a prospective High Security Employee or prospective Low Security Employee is disqualified for licensing under the provisions of Article VII, Section A(5), and the Tribal Gaming Commission believes that there are mitigating circumstances that justify waiver of the disqualifying factor, the Tribal Gaming Commission may give written notice to OSP asking to meet or confer concerning waiver of the disqualification. The Tribal Gaming Commission and the State shall meet or confer within fifteen (15) calendar days after the State receives written notice.

b. In order for the Tribal Gaming Commission to waive disqualification of licensing of any prospective High Security Employee or prospective Low Security Employee, OSP must agree to the waiver. In the event that the OSP does not agree to the waiver, the OSP shall provide the Tribal Gaming Commission with a detailed explanation of the reasons for the disagreement. OSP will not withhold agreement arbitrarily.

c. Waiver of disqualification for licensing may be based on one or more of the following circumstances:

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i. Passage of time since conviction of a crime;

ii. The applicant's age at the time of conviction;

iii. The severity of the offense committed;

iv. The overall criminal record of the applicant;

v. The applicant's present reputation and standing in the community;o

vi. The nature of the position for which the application iso made;

vii. The nature of a misstatement or omission made in the application;

viii. In the event that the applicant was convicted of a crime that was due in part to alcohol or drug dependency, the applicant's participation in any treatment program for this dependency and the applicant's progress in recovery from this dependency.

ix. The Tribe's goal of providing employment for tribal members and their spouses is advanced because the applicant is an enrolled member of the Tribe, is married to an enrolled member of the Tribe, or is an enrolled member of another Indian tribe; or

x. The Tribal Gaming Commission's personal knowledge of the applicant's character.o

d. OSP may agree to a waiver subject to conditions imposed by the Tribal Gaming Commission, such as a probationary period, restrictions on duties, or specific kinds of supervision.

7. Background Investigation During Employment.

a. The Tribal Gaming Commission may conduct additional Background Investigations of any High Security Employee or Low Security Employee at any time during the term of employment to determine continued eligibility for a Tribal Gaming License. If, after investigation, the Tribal Gaming Commission determines there is cause for revocation of the Tribal Gaming License of any High Security Employee or Low Security Employee under the criteria established in Section A(5) of this Article, the Tribal Gaming Commission shall revoke the Tribal Gaming License and shall provide a report of the investigation and revocation to OSP.

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b. OSP may conduct additional Background Investigations of any High Security Employee or Low Security Employee at any time during the term of employment for purposes of monitoring as described in Article X, Section (B)(1). OSP will notify the Tribal Gaming Commission of the investigation and the reason for it, unless OSP determines that to do so would hinder an ongoing investigation, or would be detrimental to the fairness, integrity security or honesty of the Tribal Gaming Operation, or would be otherwise contrary to law. If, after investigation, OSP determines there is cause for the revocation of the Tribal Gaming License of any employee under the criteria established in Section A(5) of this Article, it shall promptly so report to the Tribal Gaming Commission and furnish the Tribal Gaming Commission with copies of all relevant information pertaining to such determination. The Tribal Gaming Commission shall review OSP's report and supporting materials, and if the report establishes the existence of any criterion for revocation that is set forth in Section A(5) of this Article, the Tribal Gaming License shall be revoked.

8. Provisional Tribal Gaming Licenses

a. Except as provided in Section A(8)(b) of this Article, the Tribal Gaming Commission may issue a Provisional Tribal Gaming License to High Security Employees and Low Security Employees upon completion of a review of the employment application, applicant's computerized criminal history check and applicant's credit check by the Tribal Gaming Commission if the applicant is not disqualified on the basis of the results of these reviews and checks.

b. If the Tribal Gaming Commission requests OSP to conduct an applicant's Background Investigation or OSP conducts an applicant's Background Investigation pursuant to Section A(4)(a)(iv) of this Article, and the Tribal Gaming Commission includes notice to OSP of the Commission's intent to issue a Provisional Tribal Gaming License with the applicant information it provides to OSP under Section A(4) of this Article, then OSP shall notify the Tribal Gaming Commission as soon as reasonably practicable, but in no event later than ten (10) Business Days after OSP receives the notice and required applicant information, whether the applicant is eligible for a Provisional Tribal Gaming License. If OSP does not notify the Tribal Gaming Commission whether the applicant is eligible for a Provisional Tribal Gaming License within this ten (10) Business Day period, the applicant is deemed eligible.

c. The Tribal Gaming Commission agrees to submit Primary Management Officials' fingerprint cards to OSP at least ten (10) Business

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Days prior to issuing a Provisional Tribal Gaming License to a Primary Management Official.

d. The Tribal Gaming Commission shall immediately revoke any Provisional Tribal Gaming License and shall require the Tribal Gaming Operation to terminate employment immediately if it is determined during the Background Investigation that the person does not qualify for a Tribal Gaming License. Otherwise, an employee's Provisional Tribal Gaming License shall expire on the date it is determined that the employee is eligible for a Tribal Gaming License, and a Tribal Gaming License is issued to that employee. No Provisional Tribal Gaming License shall exceed ninety (90) calendar days duration following the date the Provisional Tribal Gaming License is issued unless OSP agrees to the extension of the Provisional Tribal Gaming License.

9. Duration of Tribal Gaming License and Renewal. Any Tribal Gaming License shall be effective for not more than three (3) years from the date of issue except that a licensed employee who has applied for Tribal Gaming License renewal may continue to be employed under the expired Tribal Gaming License until final action is taken on the renewal application in accordance with the Sections A(2) through A(5) of this Article. Applicants for Tribal Gaming License renewal shall provide updated information to the Tribal Gaming Commission on a form jointly developed and approved by the Tribal Gaming Commission and OSP. The applicant will not be required to resubmit historical data already provided. The Tribal Gaming Commission may perform a new Background Investigation for any employee whose Tribal Gaming License is requested to be or has been renewed.

10. Revocation of Tribal Gaming License. The Tribal Gaming Commission may revoke the Tribal Gaming License of any employee pursuant to policies determined by the Tribal Gaming Commission. Upon determination that an employee is disqualified according to the criteria described in Section A(5) of this Article, the Tribal Gaming Commission shall:

a. Immediately revoke the employee's Tribal Gaming License and require the Tribal Gaming Operation to immediately terminate employment; or

b. Waive revocation if OSP and the Tribal Gaming Commission immediately agree that a waiver pursuant to Section A(6) of this Article is appropriate; or

c. Suspend the employee's Tribal Gaming License and require the Tribal Gaming Operation to immediately suspend employment pending a determination as to whether OSP and the Tribal Gaming Commission agree to a waiver pursuant to Section A(6) of this Article.

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11. The Tribal Gaming Operation shall maintain a procedural manual or manuals that includes rules and regulations relating to gaming activities and provides that breach of these procedures, rules or regulations by an employee may result in sanctions.

12. The Tribal Gaming Commission agrees to provide to OSP, on a monthly basis, a list of all current employees of the Tribal Gaming Operation which indicates the position held and whether each employee listed is licensed as a High Security Employee or Low Security Employee, if applicable. This list shall include information about termination of any employee, and any suspension, revocation or renewal of an employee's Tribal Gaming License.

ARTICLE VIII – CLASS III GAMING CONTRACTS

A. Major Procurements.

1. The Tribe agrees to not consummate any Class III Gaming Contract for a Major Procurement unless it is in writing. Subject to the provisions of Section A(3) of this Article, the Tribe also agrees to not consummate any contract for a Major Procurement until the Tribal Gaming Commission has submitted to OSP a letter of intent to do business with the proposed Class III Gaming Contractor, a Background Investigation on the proposed Class III Gaming Contractor has been completed by OSP, and OSP has notified the Tribal Gaming Commission in writing that it has determined that the proposed Class III Gaming Contractor is not disqualified under any of the criteria in Section F of this Article. All Class III Gaming Contracts consummated by the Tribe shall include a provision that gives the State authority to suspend or prohibit the shipment of any and all Class III Gaming supplies or devices pursuant to the provisions of Article X, Section C(5) and Article XVII, Section C(3).

2. Except as provided in Section A(3), of this Article OSP shall conduct a Background Investigation on all proposed Class III Gaming Contractors for Major Procurements and shall provide a written report regarding the results of the investigation to the Tribal Gaming Commission within a reasonable period of time. The time for completion and notification of results of such Background Investigations shall not exceed sixty (60) calendar days after OSP receives from the proposed Class III Gaming Contractor both OSP's fee for the Background Investigation under Section K of this Article, and full disclosure of all information requested by the Tribal Gaming Commission and OSP under this Article. This sixty (60) day period may be extended by written notice to and consent of the Tribe, which consent shall not be unreasonably withheld. If the Tribal Gaming Commission requests, OSP agrees to make best efforts to complete a Background Investigation within less than sixty (60) calendar days.

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3. If the Tribal Gaming Commission and OSP agree in writing that business necessity or the protection of the fairness, integrity, security or honesty of the Tribal Gaming Activities require a quicker response than provided for in Section A(2) of this Article , OSP shall perform an abbreviated review within 30 calendar days of a request by the Tribe to enable the Tribe to execute a temporary Class III Gaming Contract for a Major Procurement while a complete Background Investigation is being performed. OSP's agreement shall not be unreasonably withheld. If the Class III Gaming Contractor is disqualified according to the criteria described in Section F of this Article, the temporary Class III Gaming Contract shall be terminated upon OSP's notice to the Tribal Gaming Commission, and the Tribe agrees to discontinue doing business with the Class III Gaming Contractor immediately thereafter until the contractor no longer meets the criteria for disqualification under Section F of this Article.

B. Sensitive Procurements.

1. Before consummation of a Class III Gaming Contract for a Sensitive Procurement, the Tribal Gaming Commission shall submit a letter of intent to do business with the proposed Class III Gaming Contractor for a Sensitive Procurement, or a confirming memorandum from the Tribal Gaming Commission representing that an oral Class III Gaming Contract is proposed, to OSP. Each letter of intent and confirming memorandum shall specifically identify the proposed Class III Gaming Contractor and shall contain a description of the nature of goods or services to be obtained under the proposed Class III Gaming Contract.

2. After a proposed Class III Gaming Contractor for a Sensitive Procurement has made full disclosure of all information requested by the Tribal Gaming Commission and OSP under this Article, and OSP has received its fee pursuant to Section K of this Article for any necessary Background Investigation, the Tribe may consummate a contract for a Sensitive Procurement before OSP has completed a Background Investigation on the proposed Class III Gaming Contractor.

3. OSP may conduct a Background Investigation on a proposed Class III Gaming Contractor for a Sensitive Procurement if OSP considers it necessary and the proposed Class III Gaming Contractor is not already an approved Class III Gaming Contractor in Oregon, and if a Background Investigation is performed, shall provide a written report to the Tribal Gaming Commission regarding the results of such investigation. The time for completion and notification of results of such Background Investigations shall not exceed sixty (60) calendar days after OSP receives from the proposed Class III Gaming Contractor both OSP's fee pursuant to Section K of this Article for the Background Investigation, and full disclosure of all information requested by the Tribal Gaming Commission and OSP under this Article. This sixty (60) day period may be extended by written notice to and consent of the Tribe, which consent shall not be unreasonably

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withheld. If the Tribal Gaming Commission requests, OSP agrees to make best efforts to complete a Background Investigation within less than sixty (60) calendar days. If the Class III Gaming Contractor is disqualified according to the criteria described in, Section F of this Article, the Class III Gaming Contract shall be terminated, and the Tribe agrees to discontinue doing business with the Class III Gaming Contractor immediately and thereafter until the contractor no longer meets the criteria for disqualification under Section F of this Article.

4. If the Tribe reasonably believed at the time a Class III Gaming Contract was made that the procurement action was a Sensitive Procurement, and if thereafter the Tribe determines that the procurement is a Major Procurement, then the Tribe shall immediately notify OSP of the nature, scope and anticipated duration of the procurement action. If OSP did not initially conduct a Background Investigation on the Class III Gaming Contractor for the Sensitive Procurement, OSP may proceed with a Background Investigation in accordance with Section B(3) of this Article, and if the Class III Gaming Contractor is disqualified according to the criteria described in Section F of this Article, OSP shall notify the Tribal Gaming Commission, the Class III Gaming Contract shall be terminated, and the Tribe agrees to discontinue doing business with the Class III Gaming Contractor immediately and thereafter until the Class III Gaming Contractor no longer meets the criteria for disqualification under Section F of this Article.

C. Whether entering into a written contract for a Major Procurement or obtaining any Sensitive Procurement items from a supplier, the Tribe and the supplier must acknowledge in the contract for the Major Procurement and in writing with the supplier for the Sensitive Procurement, the authority of the State to suspend or prohibit the shipment of Class III Gaming supplies or equipment pursuant to the provisions of Article XVII, Section C(3) and Article X, Section C(5).

D. Approved Contractors. OSP shall maintain a list of Class III Gaming Contractors approved by OSP or by the Oregon Lottery Commission (or their successors) to do business in Oregon with any gaming entity and shall provide a copy of the list to the Tribal Gaming Commission on a monthly basis. Notwithstanding any other provisions of this Compact, if a Class III Gaming Contractor has been included on the list, the Tribe may consummate a Class III Gaming Contract with a Class III Gaming Contractor for either a Major or Sensitive Procurement only after the Tribal Gaming Commission has submitted to OSP a letter of intent to do business with the proposed Class III Gaming Contractor or a confirming memorandum representing that an oral Class III Gaming Contract for a Sensitive Procurement is proposed. Each letter of intent and confirming memorandum shall specifically identify the proposed Class III Gaming Contractor and shall contain a description of the nature of goods or services to be obtained under the proposed Class III Gaming Contract. The Tribe shall include a provision in each Class III Gaming Contract that provides Contractor will be removed from the list of approved Class III Gaming Contractors if Contractor's actions cause Contractor to be disqualified

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from doing business with the Tribe or otherwise cause the Tribe to be out of compliance with this Compact.

E. The Tribe shall not consummate any Class III Gaming Contract with a Class III Gaming Contractor that does not grant both OSP and the Tribal Gaming Commission access, upon request, to the business and financial records of the Class III Gaming Contractor and of any Owner or Key Employee of the Class III Gaming Contractor.

F. Criteria for Contract Denial or Termination.a

1. The Tribe shall not consummate any Class III Gaming Contract for a Major Procurement, and the Tribe shall terminate a Class III Gaming Contract for any Major Procurement or Sensitive Procurement immediately, if the following conditions are either disclosed in the application materials or reported by OSP relative to a particular Class III Gaming Contractor:

a. A conviction of the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor for any felony other than a traffic offense, in any jurisdiction, within the ten-year period preceding the date of the proposed Class III Gaming Contract;

b. A conviction of the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor for any gambling offense in any jurisdiction;

c. A civil judgment against the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor, based in whole or in part upon conduct that would constitute a gambling offense, or a civil judgment entered within the ten year period preceding the date of the proposed Class III Gaming Contract against the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor, based in whole or in part upon conduct that would constitute a felony, other than a traffic offense;

d. A failure by the Class III Gaming Contractor to disclose any material fact to OSP or the Tribal Gaming Commission or their authorized agents during initial or subsequent Background Investigations, unless OSP determines that the failure to disclose was not intentional;

e. A misstatement or untrue statement of material fact made by the Class III Gaming Contractor to OSP or the Tribal Gaming Commission or their authorized agents during initial or subsequent Background Investigations as determined by the Tribal Gaming Commission or OSP, unless OSP determines that the misstatement or untrue statement of materials fact was not intentional;

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f. An association of the Class III Gaming Contractor with persons or businesses of known criminal background, or persons of disreputable character, that may adversely affect the general credibility, fairness, integrity, security, or honesty of the Tribal Gaming Activities;

g. Any aspect of the Class III Gaming Contractor's past conduct that the Tribal Gaming Commission or OSP reasonably determines would adversely affect the fairness, integrity, security, or honesty of the Tribal Gaming Activities;

h. The Class III Gaming Contractor has engaged in a business transaction with a Tribe that involved providing gaming devices for Class III Gaming conducted by a Tribe without a tribal-state Class III Gaming compact in violation of IGRA; or

i. A prospective Class III Gaming Contractor fails to provide any information requested by the Tribal Gaming Commission or OSP under this Article for the purpose of making any determination required by this Article.

2. The Tribal Gaming Commission may choose to not approve any Class III Gaming Contract for any reason the Commission deems sufficient.

3. No Class III Gaming Contractor shall own, manufacture, possess, operate, own an interest in, or gain income or reimbursement in any manner from gaming activities or gaming devices in any jurisdiction unless the activities or devices are approved and certified by another state lottery, gambling or gaming control agency, Indian Tribe with an approved tribal-state compact pursuant to IGRA, the National Indian Gaming Commission, or foreign country that has jurisdiction to approve that activity, and such ownership, manufacture, possession, operation, or income is disclosed to and approved by the Tribal Gaming Commission and OSP.

4. If a prospective Class III Gaming Contract could not otherwise be consummated because of the requirements of Article VIII regarding a Key Employee of the Class III Gaming Contractor, the Tribe may enter into a Class III Gaming Contract only if OSP and the Tribal Gaming Commission agree that the relationship between the Class III Gaming Contractor and the convicted or liable person or employee has been severed. For purposes of this Section F(4), a relationship is severed if the convicted or liable person or employee has no continuing connection with the direction or control of any aspect of the business of the Class III Gaming Contractor, and the convicted or liable person or employee is no longer employed by the Class III Gaming Contractor in any capacity. The Class III Gaming Contractor shall bear the burden of showing to the satisfaction of the Tribal Gaming Commission and OSP that a relationship has been severed.

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G. Rescission or Termination of Class III Gaming Contracts.

1. The Tribal Gaming Commission may require the Tribe to rescind or terminate any Class III Gaming Contract pursuant to policies and procedures determined by the Tribal Gaming Commission consistent with the Tribal Gaming Ordinance.

2. The Tribal Gaming Commission shall require the Tribe to terminate any Class III Gaming Contract if, at any time, the Tribal Gaming Commission or OSP determine that the Class III Gaming Contractor meets any of the criteria for disqualification under Section F of this Article. Class III Gaming Contracts shall provide that Class III Gaming Contractors consent to rescission or termination of any Class III Gaming Contract for cause consistent with the criteria established by Section F of this Article by virtue of entering into a Class III Gaming Contract.

H. Contractor Reporting Requirements.

1. The Tribe shall require all Class III Gaming Contractors to submit to the Tribal Gaming Commission and OSP any financial and operating data requested by the Tribal Gaming Commission or OSP. The Tribal Gaming Commission shall specify the frequency and format for the submission of such data.

2. The Tribal Gaming Commission, OSP, or their agents reserve the right to examine Class III Gaming Contractor tax reports and filings and all records from which such tax reports and fillings are compiled.

3. All Class III Gaming Contracts shall contain a provision requiring the Class III Gaming Contractor to notify both the Tribal Gaming Commission and OSP of the transfer of a Controlling Interest in the ownership of the Class III Gaming Contractor.

I. Termination of Contract.

1. No Class III Gaming Contract shall have a term longer than seven (7) years, other than contracts for traditional financing of capital.

2. A Class III Gaming Contract shall be terminated immediately upon the occurrence of any of the following:

a. The Class III Gaming Contractor is discovered to have made any material statement, representation, warranty, or certification in connection with the Class III Gaming Contract that is false, deceptive, incorrect, or incomplete;

b. The Class III Gaming Contractor, or any Owner or Key Employee of the Class III Gaming Contractor is convicted of a felony or a gambling-

related offense that reflects on the Class III Gaming Contractor's ability to perform honestly in carrying out the Class III Gaming Contract unless OSP and the Tribal Gaming Commission agree that the relationship between the Class III Gaming Contractor and the convicted or liable person has been severed as provided in Section F of this Article; or

c. The Class III Gaming Contractor jeopardizes the fairness, integrity, security or honesty of the Tribal Gaming Activities.

J. The Tribe shall include a provision in each Class III Gaming Contract providing that OSP may at its sole election conduct an annual update Background Investigation of each Class III Gaming Contractor and that the Class III Gaming Contractor shall pay OSP for OSP's reasonable and necessary costs associated with conducting that Background Investigation, as determined by OSP.

K. Fees for Background Investigations.

1. OSP shall be reimbursed its reasonable and necessary costs associated with conducting Background Investigations as determined by OSP.

2. OSP shall assess the cost of Background Investigations for Class III Gaming Contract applications to the applicants. The applicant is required to pay the Background Investigation fee in full prior to commencement of the Background Investigation. If the applicant refuses to prepay the cost of a Background Investigation, the State shall notify the Tribal Gaming Commission, and the Tribal Gaming Commission may choose to pay the Background Investigation cost or withdraw its request for the Background Investigation.

L. Access to Contracts.

1. If the Primary Management Official is a corporation or other form of organization, the Primary Management Official shall provide OSP at all times with a current copy of all Class III Gaming Contracts between the Primary Management Official and the Tribe.

2. If the Primary Management Official is a corporation or other form of organization, the Primary Management Official shall provide to the State complete information pertaining to any transfer of Controlling Interest in the management company at least thirty (30) calendar days before such change; or, if the Primary Management Official is not a party to the transaction effecting such change of ownership or interests, immediately upon acquiring knowledge of such change or any contemplated change.

3. In order to assure the fairness, integrity, security and honesty of the Tribal Gaming Activities, the Tribal Gaming Commission agrees to make available for inspection to OSP, upon request, a list of all non-gaming contractors, suppliers

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and vendors doing business with the Tribal Gaming Operation. The Tribal Gaming Commission also agrees to give OSP access to copies of all non-Class III Gaming contracts upon OSP's written request. OSP shall include in its written request an explanation of the grounds for the request, including any concerns about a particular non-Class III Gaming contractor and an explanation of how, in OSP's judgment, its review of the non-Class III Gaming contracts would further the fairness, integrity, security or honesty of the Tribal Gaming Activities. Notwithstanding the foregoing, OSP is not required to include any explanation in its written request for access to copies of non-Class III Gaming contracts if OSP is prohibited by law from such disclosure or OSP determines that an explanation would be detrimental to the fairness, integrity, security or honesty of the Tribal Gaming Activities.

ARTICLE IX – ADDITIONAL REGULATIONS REGARDING CLASS III GAMING

A. Gaming Regulations. Conduct of all Class III Gaming authorized under this Compact shall be in accordance with the requirements of applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Activities. The Tribe and the State agree that the Minimum Internal Controls may be modified or supplemented in writing by mutual agreement of the Tribal Gaming Commission and OSP. The Tribe and the State understand that such modifications or supplements do not require formal amendment of this Compact. Identification badges. The Tribal Gaming Commission shall require all employees of the Tribal Gaming Operation employed at the Gaming Facility to wear, in plain view, identification badges issued by the Tribal Gaming Commission that include photo and name. Employees assigned to covert compliance duties shall only be required to have on their person an identification badge. OSP employees shall not be required to wear identification badges.

C. Credit.

1. Except as otherwise provided in Section C(2) of this Article all Class III Gaming shall be conducted on a cash basis. Except as provided herein, no person shall be extended credit for Class III Gaming nor shall the Tribe permit any person or organization to offer such credit for a fee. Cashing checks for purposes of Class III Gaming constitutes extending credit under this subsection, except when a check is used to facilitate electronic transfer of funds when availability of funds is verified, or when a check has been issued by a Warm Springs tribal entity employer.

2. At anytime at least one year after the commencement of Class III Gaming at the Gaming Facility, or earlier upon the mutual agreement of the parties, the

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Tribe may request that the State negotiate a memorandum of understanding with the Tribe regarding the terms and conditions under which the Tribal Gaming Operation may extend credit to certain patrons of the Gaming Facility. The State agrees to negotiate in good faith regarding such a memorandum of understanding. The memorandum of understanding must address the amounts of credit that may be extended, the qualifications for credit, procedures and policies for the extension of credit that are consistent with gaming industry standards, safeguards to ensure that any social or public safety problems that may result from gaming are not increased by the extension of credit, and any other topics that either party reasonably believes are necessary.

D. Prohibition on attendance and play of minors. No person under the age of twenty-one (21) shall participate in, or be employed in any position directly related to, any Class III Gaming authorized by this Compact. If any person under the age of twenty-one (21) plays and otherwise qualifies to win any Class III Gaming prize or compensation, the prize or compensation shall not be paid. Employees under age twenty-one (21) whose non-gaming duties require their presence in the Gaming Area may be present in the Gaming Area, but only to the extent required by the employee's non-gaming duties.

E. Prohibition of firearms. With the exception of federal, state, local and tribal law enforcement agents or officers on official business, the Tribe will prohibit any person from possessing firearms within the Gaming Complex.

F. Service of Alcohol. Alcohol may be served in the Gaming Complex, including in the Gaming Area, only if authorized by the Tribe and permitted by federal law. Nothing in this Section F shall permit the State to impose taxes on the sale of alcoholic beverages by the Tribe on the Cascade Locks Land. If alcohol is served in the Gaming Complex, no alcoholic beverages may be served free or at a reduced price to any patron of the Gaming Complex. Before alcohol may be served in the Gaming Complex, the Tribe and the State must enter into a memorandum of understanding that establishes which State laws and Oregon Liquor Control Commission licensing regulations will apply to the sale or service of alcoholic beverages at the Gaming Complex.

G. Liability for damage to persons and property. During the term of this Compact, the Tribe shall obtain and maintain commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States, underwritten by an insurer or insurers with a rating of "A" or above by A. M. Best, with limits of not less than $500,000 for one person and $3,000,000 for any one occurrence for any bodily injury, personal injury, or property damage. The Tribe's insurance policy shall have an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy in state, federal or tribal court, including when the Tribe or an entity of the Tribe is the named defendant. The policy shall provide that the State, OSP, their divisions, officers and employees are additional insureds, but only with respect to the Tribe's activities under this Compact, provided that the Tribe shall not be liable for any claim or cause of action for injury or damages caused by the errors or omissions of the State, OSP, or their divisions, officers and employees.

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H. INDEMNIFICATION. THE TRIBE SHALL INDEMNIFY AND HOLD HARMLESS THE STATE, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY CLAIMS, DAMAGES, LOSSES OR EXPENSES ARISING OUT OF OR RELATING TO THE ACTIVITIES OF THE TRIBE UNDER THIS COMPACT, WITHIN THE COVERAGE OF THE INSURANCE DESCRIBED IN SECTION G OF THIS ARTICLE, UP TO THE POLICY LIMITS OF SUCH INSURANCE WHETHER OR NOT TRIBE HAS COMPLIED WITH THE REQUIREMENTS OF SECTION G, EXCEPT AS MAY BE THE RESULT OF THE NEGLIGENCE OF THE STATE, ITS OFFICERS, DIRECTORS, EMPLOYEES ANDAGENTS, OR ANY OF THEM.

ARTICLE X – ENFORCEMENT OF GAMING REGULATIONS

A. Tribal Gaming Commission.

1. The Tribe agrees to maintain a Tribal Gaming Commission that has the exclusive authority to regulate gaming activities on the Cascade Locks Land, that has sufficient numbers of adequately-trained personnel to monitor and regulate the conduct of Class III Gaming, and that has the resources to perform its duties under Tribal law and this Compact. The Commission or individuals designated to perform Commission duties shall not participate in any way in the management of the Gaming Facility. Commission members may be removed only for cause by the Tribal Council. Commission members must satisfy the Background Investigation requirements that are applicable to High Security Employees and Primary Management Officials outlined in Article VII, Sections A(5)(a)(i) through (vi) and Sections A(5)(b)(i) and (ii).

2. The Tribal Gaming Commission shall have primary responsibility for the on-site regulation, control and security of the Tribal Gaming Operation authorized by this Compact, and for the enforcement of this Compact on behalf of the Tribe. The Tribal Gaming Commission's role shall include the promulgation and enforcement of rules and regulations that:c

a. Ensure compliance with all applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming;

b. Ensure the physical safety of patrons in, and of personnel employed by, the establishment;

c. Safeguard the assets transported to and from, and within, the Gaming Facility;

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d. Protect Gaming Facility patrons and property from illegal activity;

e. Provide that, whenever Gaming Related Criminal Activity is observed or suspected, best efforts will be made to gather as much identifying information regarding the suspect as possible, such as drivers' license number, photograph, description of the suspect's vehicle and vehicle license information and to then immediately notify OSP and other appropriate law enforcement agencies;

f. Provide for the notification of OSP within seventy-two (72) hours of all other suspected crimes occurring anywhere at the Gaming Facility.

g. Require, regardless of any other logs or records that may be maintained, the Tribal Gaming Commission to record any and all Violations within the Gaming Facility on computer printouts or in indelible ink in a bound notebook from which pages cannot be removed, and each side of each page of which is sequentially numbered, with the following information:

i. The assigned sequential number of the incident;

ii. The date;

iii. The time;

iv. The nature of the incident;

v. The person involved in the incident;

vi. The employee assigned to conduct the investigation, if any; and

vii. The outcome and action taken, if any.

h. Require maintenance of logs relating to surveillance, security, cashier's cage, credit, VLTs (showing when machines are opened), and VLT location;

i. Establish and maintain an updated list of persons barred or excluded for any length of time over forty-eight (48) hours from the Gaming Facility for any reason (other than the person's status as a former employee), including but not limited to the person's criminal history or the person's association with career offenders or career offender organizations, and furnish that list to OSP;

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j. Require an annual audit of the Tribal Gaming Operation by a certified public accountant;

k. Ensure that a closed circuit television system is maintained in the cash room of the Gaming Facility and that copies of the floor plan and TV system are available for inspection by OSP;

l. Ensure that a cashier's cage is maintained in accordance with industry standards for security;

m. Ensure that pari-mutuel clerks are sufficiently trained;

n. Ensure that sufficient security personnel are employed and trained;

o. Subject to agreement with the State, establish a method for resolving disputes with players and providing notice to players of such a method;

p. Ensure that surveillance equipment and personnel are managed and controlled independently of management of the Tribal Gaming Operation; and

q. Ensure that all contractors supplying VLTs to the Gaming Facility obtain proper shipping authorization from OSP prior to the VLTs being transported.

3. Tribal Gaming Inspections.

a. The Tribal Gaming Commission or its agents shall be on duty within the Gaming Facility during all hours of operation. The Commission and its agents shall have immediate access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming. Personnel designated as surveillance operators shall not fulfill this function on behalf of the Tribal Gaming Commission. Any Violation by the Tribal Gaming Operation, a gaming employee, or any person on the premises whether or not associated with the Tribal Gaming Operation, shall be reported immediately to the Tribal Gaming Commission, and the Tribal Gaming Commission shall report such Violations to OSP within seventy-two (72) hours of the earlier of the time the Violation was reported to the Tribal Gaming Commission or to the management of the Tribal Gaming Operation.

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b. The Tribal Gaming Commission may designate any individual or individuals to perform the inspection duties outlined in this Article X, Section A(3), so long as those individuals perform those duties independently of the management of the Tribal Gaming Operation, and are supervised and evaluated by the Tribal Gaming Commission as to the performance of those duties.

c. Inspections by the Tribal Gaming Commission under this Section A(3) shall include monitoring compliance with all applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, Tribal Internal Controls, and policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming. These inspection duties of the Tribal Gaming Commission include but are not limited to:

i. Observation of the following (at least monthly or more frequently as determined by the Tribal Gaming Commission):

(a) Sensitive gaming inventories;

(b) VLT or table game drop;

(c) Soft count;

(d) Security and surveillance logs;

(e) Movement of cash within, into and out of the Gaming Facility;

(f) Surveillance procedures;

(g) Security procedures;

(h) Games controls; and

(i) Integrity of VLT microprocessor or E-PROM, CD ROM, hard disk or other electronic decision-making technologies.

ii. Appropriate investigation of any potential Violations.

iii. Investigation of any cash variance of five hundred dollars ($500) or greater in a specific variance report or that the Tribal Gaming Commission determines is a threat to the fairness,

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integrity, security or honesty of the Tribal Gaming Operation, followed by a report of the findings to the Tribal Gaming Commission and OSP.

iv. At the player's request, review and investigate all player gaming disputes not resolved by the Tribal Gaming Operation.

v. At the player's request, review and investigate all player gaming disputes five hundred dollars ($500) or greater.

vi. Reporting to OSP any criminal or regulatory issues that may affect the fairness, integrity, security or honesty of the Tribal Gaming Activities.

4. Investigations and Sanctions. The Tribal Gaming Commission shall conduct an appropriate investigation of any reported Violation and shall require the Tribal Gaming Operation to correct the Violation upon such terms and conditions as the Tribal Gaming Commission determines to be necessary. The Tribal Gaming Commission shall be empowered by the Tribal Gaming Ordinance to impose fines and other sanctions within the jurisdiction of the Tribe against the Tribal Gaming Operation, a gaming employee, or any other person directly or indirectly involved in, or benefiting from, the Tribal Gaming Operation.

5. Reporting to OSP. The Tribal Gaming Commission shall forward copies of all completed investigation reports as described in Section A(3) of this Article and final dispositions to the State on a continuing basis. If requested by the Tribal Gaming Commission, the State shall assist in any investigation initiated by the Tribal Gaming Commission, and provide other requested services to assist in enforcement of the provisions of this Compact, tribal ordinances, regulations or applicable laws of the State. In cases where an investigation lasts longer than forty-five (45) calendar days, the Tribal Gaming Commission shall notify OSP at the expiration of the forty-five (45) calendar days and every thirty (30) calendar days thereafter in writing as to the status of the investigation, why the matter is taking longer than forty-five (45) calendar days, and the anticipated completion date of the investigation.

B. State Enforcement of Compact Provisions.

1. Monitoring. OSP is authorized to monitor the Tribal Gaming Activities in the manner the State reasonably considers necessary to verify that the Tribal Gaming Operation is conducted in compliance with the provisions of this Compact and to verify that the Tribal Gaming Commission is fulfilling the Tribe's obligations under this Compact. OSP shall have free and unrestricted access to all areas of the Resort during normal operating hours without giving prior notice to the Tribal Gaming Commission except for those areas that are mutually agreed to in writing by OSP and the Tribal Gaming Commission as being excluded. At the

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Tribe's option, it may designate a Tribal Gaming Agent or other Tribal law enforcement official to accompany the OSP official monitoring the Tribal Gaming Activities. Such designation by the Tribe shall not delay, inhibit, or deprive OSP of such access. The Tribe agrees that OSP's monitoring function includes, at a minimum, the activities identified in this Compact and any amendments and memoranda of understanding entered into pursuant to this Compact, and that the actual, reasonable and necessary cost of monitoring activities shall be assessed to the Tribe as provided in Section C of this Article. In addition to OSP's regular monitoring functions, the Tribe agrees that OSP may conduct the following activities, the cost of which shall also be assessed to the Tribe as provided in Section C of this Article:

a. An annual comprehensive Compact compliance review, which shall be planned and conducted jointly with the Tribal Gaming Commission, of the Tribal Gaming Activities or any other tribal activities subject to this Compact to verify compliance with all provisions of this Compact (including Minimum Internal Controls) and with all applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming. This review shall include, at a minimum, a review in the following areas: administrative controls (Tribal Internal Controls), gaming operations controls, drop boxes, station inventories, surveillance department controls, cashier cage controls, count room controls (security and surveillance), accounting department controls (security), general controls (Compact regulatory requirements), blackjack controls, VLT controls, Class III accounts payable, employee identification, gaming chip inventory for gaming floor and cage, physical examination of all class III gaming cards, chips, e-proms, paper stock, printers, keno balls, fill slips, video gaming devices, keno controls, off-track betting and security department controls;

b. Periodic review of any part of the Tribal Gaming Activities or any other tribal activities subject to this Compact in order to verify compliance with all provisions of this Compact (including Minimum Internal Controls) and with all applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming;

c. Investigation of possible Violations and other gaming regulatory matters, whether discovered during the action, review, or inspection by OSP during its monitoring activities, or otherwise;

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d. Investigation of possible criminal law violations that involve the Tribal Gaming Activities, whether discovered during the action, review, or inspection by OSP during its monitoring activities, or otherwise;

e. Periodic review of any contracts between the Tribe and suppliers, vendors or contractors that provide non-gaming goods or services to the Tribal Gaming Operation for the Gaming Facility as provided in Article VIII, Section L(3).

2. The parties agree that if any Class III Gaming activities are conducted or intermingled within the Tribe's Gaming Facility in such a way that they are inseparable from Class II Gaming activities, such as surveillance of both Class II and Class III Gaming operations by a single surveillance department or use of the same equipment in both operations, and the intermingling prevents the State from fulfilling its responsibilities under this Compact without reviewing or overseeing the Class II Gaming activities, OSP shall have full access to both for purposes of carrying out the duties of OSP with respect to Class III Gaming under this Compact.

3. OSP shall ensure that all personnel assigned to carry out the terms of the Compact shall be provided with adequate training for this purpose. The Tribe may request removal of a state law enforcement officer or auditor on the basis of conduct disrespectful of the Tribe or its culture. Effective performance of the officers' or monitor's duties shall not be the basis for disapproval. If the Tribe makes such a request, it shall meet with OSP to discuss the reason for the request, and OSP shall consider the request.

4. Access to Records. The State is authorized to review and copy, during normal business hours, and upon reasonable notice, any and all Tribal records pertaining to the Tribal Gaming Activities, including all Class III Gaming-related contracts, whether those records are prepared or maintained by the Tribe, the Tribal Gaming Commission or the Tribal Gaming Operation. The Tribe agrees to require applicants for a Tribal Gaming License to consent to disclosure to the State of Tribal records relevant to the determination of eligibility for licensing. The Tribe and the State agree that the Tribe shall include information obtained solely from tribal records in a separate section of the application that is submitted to the OSP, clearly identified as coming from tribal records by the heading: **"CONFIDENTIAL TRIBAL INFORMATION-DO NOT COPY"**. After review of such information, the OSP shall not retain and shall return promptly that section of the application to the Tribal Gaming Commission, as agreed upon by the Tribal Gaming Commission and OSP. Information contained in other sections of the application may be retained by OSP, even if containing information from tribal records. OSP shall return to the Tribe copies of tribal documents related to background investigations within 60 calendar days of obtaining the copies. OSP shall be entitled to retain copies of the following: the Tribal Gaming Commission investigative report, a photograph of the applicant, and information release forms.

a. The Tribe acknowledges that any records created by or maintained by the State, including any records created or maintained in connection

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with the performance of the State's duties and functions under this Compact, belong to the State and are fully subject to the State of Oregon Public Records Law, ORS 192.410 to 192.505. Any information concerning the Tribal Gaming Activities that is contained in the State's records may be subject to disclosure under ORS 192.410 to 192.505, unless the State would be permitted to withhold that information from disclosure under ORS 192.410 to 192.505. Examples of the kind of information that may be withheld from disclosure by the State under appropriate circumstances include:

i. "Trade secrets" as defined in ORS 192.501(2);

ii. Investigatory information compiled for criminal law purposes as described in ORS 192.501(3);

iii. Information submitted in confidence, as provided in ORS 192.502(4), which could include, for example, information contained in state records which would reveal information about the operation of any Class III Game, about the Tribe's finances, or about the workings of the Tribal Gaming Operation that could reasonably assist a person in the conduct of activity that could adversely affect the fairness, integrity, security or honesty of the Class III Gaming activities; or

iv. Any information the disclosure of which is specifically prohibited by state or federal law.

b. Applications submitted to and retained by OSP for Tribal Gaming Licenses are State of Oregon records and may be subject to disclosure under ORS 192.410 to 192.505 unless the State would be permitted to withhold that information from disclosure under ORS 192.410 to 192.505.

c. Information about the Tribal Gaming Activities, whether obtained from the Tribe or from any other source, that is included in a document prepared, owned, used or retained by the State in connection with its duties and functions under this Compact may be subject to disclosure under ORS 192.410 to 192.505 unless the State would be permitted to withhold that information from disclosure under ORS 192.410 to 192.505 or as otherwise provided by this Compact.

d. The Tribe has agreed to allow OSP access to sensitive financial, security and surveillance information that the Tribe considers confidential. The State acknowledges that the Tribe has voluntarily given the State access to this information and that the Tribe would not otherwise be required by law to do so. The State acknowledges that this information should reasonably be considered confidential. To the extent such

information is included in any State records that are subject to disclosure, the State hereby obliges itself not to disclose this information when the public interest, including the public interest in maintaining the honesty, integrity, fairness and security of the Tribe's Class III Gaming activities, would suffer by such disclosure.

e. The State agrees to notify the Tribe promptly of any request for disclosure of documents containing information about the Tribal Gaming Activities. If the State decides to release any documents that contain information about the Tribal Gaming Activities, the State will notify the Tribe at least five (5) Business Days before any disclosure is made.

f. Any dispute as to the disclosure of documents under this Section B(4) shall be brought in the Oregon state courts.

g. Nothing in this Section B(4) precludes the State or the Tribe from disclosing information pursuant to state, tribal or federal rules of civil procedure or evidence in connection with litigation, a prosecution or criminal investigation, subject to any defenses either party may assert. The parties agree to assert available defenses to disclosure unless in that party's determination, to do so would jeopardize the party's position in litigation.

5. Investigative Reports. After completion of any investigative report, OSP shall provide a copy of the report to the Tribal Gaming Commission. In cases where an investigation lasts longer than forty-five (45) calendar days, OSP shall notify the Tribal Gaming Commission at the expiration of the forty-five (45) calendar days and every thirty (30) calendar days thereafter in writing as to the status of the investigation, why the matter is taking longer than forty-five (45) calendar days, and the anticipated completion date of the investigation.

C. Assessment for State Monitoring, Oversight and Law Enforcement Costs.

1. The Tribe agrees that the federally-recognized Indian tribes in Oregon that conduct Class III Gaming ("Gaming Tribes") have the collective responsibility to pay for the costs of performance by OSP of its activities authorized under this Compact, including associated overhead ("OSP's Costs"). The Tribe agrees to pay its fair share of OSP's Costs pursuant to the memorandum of understanding entered between the Tribe and OSP in accordance with Section C(4) of this Article.

2. During the development of its biennial budget, OSP shall distribute a draft of the Tribal Gaming Section portion of the OSP budget to the Gaming Tribes for their review and comment prior to submitting the budget to the Governor and to the Legislature. OSP shall give full consideration to the Gaming Tribes' comments on the budget. Notwithstanding the right of the Gaming Tribes to

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comment on the budget, each Gaming Tribe retains the right to participate in any public review of the budget by either the Governor or the Legislature, as well as review before the Emergency Board for any increase in the budget.

3. Because of the government-to-government relationship between the Tribe and the State, the parties recognize that the Tribe's obligation to pay its fair share of OSP's Costs as provided by this Compact is unique. Nothing in this Compact is intended to, nor shall be construed as, creating a responsibility for the Tribe to pay for any other governmental services rendered by or received from the State.

4. No later than six (6) months before the date scheduled for commencement of Class III Gaming at the Gaming Facility, the Tribe and OSP shall execute a memorandum of understanding that includes the methodology for determining the amount of the Tribe's fair share of OSP Costs and the process for, including timing of, the Tribe's payments of its fair share of OSP Costs. The memorandum of understanding may be amended without amending this Compact.

5. If the Tribe disputes the amount of the OSP Costs under any invoice, the Tribe shall pay timely the undisputed amount within thirty (30) calendar days of the date the Tribe receives the invoice and shall notify OSP in writing of the specific nature of the dispute for any disputed amount that remains unpaid from that invoice. If the parties have not resolved the dispute within 15 calendar days after OSP receives the Tribe's notice, then the Tribe shall pay the disputed amount into an interest-bearing escrow account at a bank insured by the FDIC, that is separate and distinct from other tribal accounts, with escrow instructions providing that the funds (including interest) are to be released only upon authorization by both the Tribe and OSP. The parties shall share the reasonable costs of the escrow. The dispute shall then be resolved pursuant to the procedures set forth in Article XVII.{PRIVATE } If the Tribes fail to pay timely the disputed amount into escrow or pay timely the undisputed amount, the Oregon State Police may suspend any Background Investigations that are in process under Article VII or Article VIII, or both, or withhold authorization for the shipment of Class III Gaming equipment under this Compact, or the State may pursue other remedies for Compact violations available under this Compact or under IGRA, or any combination of the foregoing.

ARTICLE XI – TRIBAL REGULATORY STANDARDS

A. Health, Safety and Environmental Standards.

1. The Tribe agrees to adopt, and the Tribe shall enforce, health, safety and environmental ordinances applicable on the Cascade Locks Land. The health, safety and environmental ordinances must be at least as rigorous as comparable standards imposed by the laws and regulations of the State, unless the Tribe and State agree in the memorandum of understanding required by Section A(7) of this Article that the Tribe's agreement to comply with applicable federal law(s)

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satisfies any portion of the requirements of this Section A(1). The Tribe agrees to cooperate with any State of Oregon agency or local public entity generally responsible for enforcement of comparable health, safety and environmental standards applicable to non-tribal lands to assure that the planning, construction and operation of the Tribal Gaming Complex complies with such standards. The Tribe shall use its regulatory jurisdiction to assure that the standards contained in the health, safety and environmental ordinances are met and maintained.

2. The Tribe agrees that its activities on the portion of the Resort not on the Cascade Locks Land shall comply with applicable state and federal health, safety and environmental laws.

3. After the State has notified the Tribal Gaming Commission and the Tribe's regulatory body identified in the memorandum of understanding required under Section A(8) of this Article, the State may have state or local inspectors verify the Tribe's compliance with this Section A.

4. The Tribe's ordinances governing water discharges from the Tribal Gaming Complex shall be at least as protective of health, safety and the environment as the standards that would be imposed by the laws of the State of Oregon. However, to the extent there are federal standards specifically applicable on the Cascade Locks Land that would preempt such State of Oregon standards, then such federal standards shall govern.

5. The Tribe shall take all steps reasonable and necessary to ensure ongoing availability of sufficient and qualified fire suppression services to the Tribal Gaming Complex. Any amounts paid by the Tribe to the City of Cascade Locks Article XVI, Section B(2)(b) may be used to satisfy this requirement. However, the Tribe acknowledges that the Tribe's obligations under this Section A(5) are not necessarily satisfied by such payments if such payments do not cover the full cost of adequate fire suppression services.

6. Upon request of the State, the Tribe agrees to provide evidence satisfactory to the State that any new construction, renovation or alteration of the Tribal Gaming Complex satisfies applicable health, safety and environmental standards of the Tribe. Satisfactory evidence includes a certificate or other evidence of compliance from the appropriate tribal official responsible for enforcement of tribal standards or from the appropriate state or local official responsible for enforcement of comparable state standards.

7. As used in this Section A, "health, safety and environmental standards" include but are not limited to structural standards, fire and life safety standards, water quality and discharge standards, food handling standards, and any other standards that are generally applicable under state or federal law to a non-tribal facility that is open to the public for purposes of protecting the public within the

facility. "Health, safety and environmental standards" do not include land use regulations or zoning laws.

8. Prior to the commencement of construction of the Resort, but in no event later than one year before the date scheduled for commencement of Class III Gaming at the Gaming Facility, the Tribe and the State shall execute a memorandum of understanding that sets forth the health, safety and environmental standards that the Tribe will use to satisfy the requirements of this Section A and that identifies the Tribe's regulatory body(ies) that will enforce these standards.

B. Employment and Public Accommodations Standards.

1. The policy of the State of Oregon is to ensure that adequate employment and public accommodations standards are in place for the benefit of the employees and patrons of the Resort. The policy of the Tribe has been to provide its employees and patrons with rights, either through tribal ordinances or policies, that are in compliance with applicable federal law and that are generally consistent with the public policy of the State of Oregon in the area of employment rights and public accommodations. In order to codify and implement the Tribe's practices, and to insure that the employment and public accommodations laws at the Resort are commensurate with State of Oregon standards, the Tribe agrees to adopt an employment and public accommodations ordinance applicable to the Resort ("Employment Ordinance").

2. Within one year following approval of this Compact by the Secretary of Interior, and prior to commencement of Class III Gaming at the Gaming Facility, the Tribe agrees to adopt the Employment Ordinance. The Employment Ordinance will address the following subject matters and provide standards equal or greater than the standards in the state or federal laws referenced below with respect to each of the following subject matter areas:

a. Payment and collection of wages (see ORS 652.110, 652.120, 652.140, 652.160, 652.190, 652.220, 652.240, 652.610, 652.620, 652.710 and 652.720 for comparable state standards).

b. Employee access to personnel records (see ORS 652.750 for comparable state standards).

c. Minimum wage of workers (see ORS 653.020, 653.025, 653.035 for comparable state standards).

d. Payment of employee overtime (see ORS 653.261, 653.268, 653.269 for comparable state standards).

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c. Employment of minors (see ORS 653.305, 653.310, 653.315, 653.320, 653.326 for comparable state standards).

f. Non-discrimination in employment. The Employment Ordinance shall be consistent with standards set out in Title VII of the Civil Rights Act of 1964, 42 USC § 2000e, as amended, except that allowance may be made, at the Tribe's discretion, for the Tribe's Tribal Member and Indian Preference Policy (see Tribal Council Resolution No. 8363 (February 25, 1992)) and for the Tribe's Drug and Alcohol Free Workplace Policy (see Tribal Council Resolution No. 7116 (Nov. 15, 1988)).

g. Employee family medical leave (see ORS 659A.150 through 659A.174, 659A.186 for comparable state standards).

h. Non-discrimination in public accommodations (see ORS 659A.400 through 659A.409 for comparable state standards).

i. Federal Americans with Disabilities Act (ADA). The Employment Ordinance shall be consistent with standards set out in Title I and Title III of ADA (42 USC §§ 12112-12114 and 42 USC §§ 12182 and 12183).

3. Upon request of the State, but no more often than every two years, the Tribe agrees to review and update the Employment Ordinance to assure continued compliance with Section B(2) of this Article.

4. The Employment Ordinance shall contain a dispute resolution and enforcement process that provides for efficient, timely, unbiased, and fair resolution of disputes arising under the Employment Ordinance, with meaningful penalties for violations of the Employment Ordinance and an opportunity for appeal to a neutral third-party decision maker.

5. Any dispute between the Tribe and the State regarding compliance of the Employment Ordinance with Sections B(2) through B(4) of this Article shall be subject to the dispute resolution procedure set out in Article XVII.

C. Workers' Compensation Insurance. The Tribe agrees to provide workers' compensation insurance for the benefit of employees at the Resort and their beneficiaries to at least:

1. the level provided under the Warm Springs Tribal Workers' Compensation Code as in effect on the date of the execution of this Compact, or, at the Tribe's option,

2. the level required by ORS 656.001 through 656.990.

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D. Unemployment Insurance. The Tribe agrees to provide unemployment insurance for the benefit of employees at the Resort through participation in the State's unemployment insurance system pursuant to ORS 657.425.

E. Occupational Safety and Health. The Tribe agrees that its activities on the Cascade Locks Land will comply with the federal Occupational Safety and Health Act of 1970, 29 USC § 651 *et seq.*, as amended.

F. Tax Withholding. The Tribe shall report to the Oregon Department of Revenue gambling winnings paid to any person subject to Oregon personal income tax on those winnings whenever the Tribe would be required to report those winnings to the Internal Revenue Service. The Tribe shall make these reports to the State by submitting a copy of the reporting form the Tribe provides to the Internal Revenue Service or other form mutually agreeable to the Tribe and the State. The Tribe agrees that the management of the Resort will withhold and remit personal income taxes from employee wages to the Oregon Department of Revenue in the manner prescribed by the Department of Revenue. Withholding shall not be required where the earnings are exempt from personal income tax. The Tribe and the Oregon Department of Revenue shall agree on a procedure for prorating where the earnings are partially exempt.

G. Local Public Safety Issues.

1. If local government officials believe that an off-Cascade Locks Land public safety problem has been created by the existence of the Gaming Complex, the Tribe, or its designated representative, shall agree to meet with the mayor or county commission of the affected government to develop mutually-agreeable measures to alleviate the problem. This requirement is not limited to local governments located in Hood River County. If an off-Cascade Locks Land public safety problem has been created by the existence of the Gaming Complex, the Tribe shall undertake to perform any mutually-agreeable and reasonable measures to alleviate the problem. If the Tribe and local government officials are unable to agree on measures to alleviate the problem, the State may initiate the dispute resolution process established in Article XVII.

2. Before any Class III Gaming is conducted at the Gaming Facility, the Tribe shall enter a memorandum of understanding with the City of Cascade Locks and the County of Hood River regarding law enforcement coordination with the City and County.

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ARTICLE XII – PROTECTION OF THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA

A. Consistenc with Columbia River Gor e National Scenic Area Act.

The Tribe agrees that its activities pursuant to this Compact will be consistent with the Columbia River Gorge National Scenic Area Act, 16 USC § 544, *et seq*. (the "Gorge Act").

B. Design of the Resort.

1. The Tribe agrees that the design, construction and operation of the Resort will take into account the unique natural surroundings of the Cascade Locks Land, which is located within the Columbia River Gorge and Columbia River Gorge National Scenic Area. The parties agree that the Resort is intended to be of the highest architectural quality and constructed with appropriate materials that are compatible with the local environment and landscape.

2. The Tribe agrees to use appropriate energy efficient and other "green" building technologies and standards in the design and construction of the Resort in order to reduce environmental and energy consumption impacts of the Resort. The Tribe agrees to take into consideration the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") certification program and to incorporate appropriate elements from the LEED certification program into the design and construction of the Resort to the fullest extent practicable and economically feasible. Specifically, with respect to energy use, the Tribe agrees that it intends to design and build a facility that uses substantially less energy than a similar facility built to Oregon's current building code. The State agrees that State of Oregon agencies and expertise will be made available to the Tribe, as appropriate, to facilitate the design and construction of an energy-efficient Resort.

3. The Tribe agrees to consult with the State regarding the design of the Resort and agrees to address adequately any reasonable concerns promptly raised by the State regarding the design. An outline of the footprint and a conceptual rendering of the Tribe's current plans for the Resort, as contemplated by the parties at the time of the execution of this Compact, are attached as Exhibits G and H, respectively.

C. Renewable Energy.

The State and the Tribe agree that the promotion of the use of renewable energy sources is good and mutually-beneficial public policy. To the extent practicable and economically feasible, the State and the Tribe agree to work together, in a government-to-government manner and in conjunction with appropriate local and federal government entities, to pursue the use of renewable energy as a source of some or all of the Resort's energy needs or to pursue the development and use of renewable energy offsite in an effort to offset some or all of the energy use of the Resort, or both. Such efforts could

include some or all of the following: the direct use of renewable energy sources by the Resort (such as use of solar panels or fuel cells), the indirect use of renewable energy sources by the Resort (such as the promotion and use of additional renewable energy sources by the local utility provider, which may be indirectly provided to the Resort), the development and use of renewable energy offsite by the Tribe or a tribal partner in an effort to offset some or all of the energy use of the Resort, or the purchase of renewable energy credits.

D. Traffic and Air Quality Impacts within the Columbia River Gorge National Scenic Area.

In an effort to protect air quality in the Columbia River Gorge and limit the emission of greenhouse gases, the Tribe shall develop a traffic management plan intended to minimize emissions caused by vehicular traffic to and from the Resort. The Tribe agrees to consult with the State in the development of such a plan and will address adequately any reasonable concerns raised by the State regarding the plan. Implementation of the traffic management plan must begin within one year following commencement of Class III Gaming at the Gaming Facility. The plan may include such initiatives as the promotion of the use of shuttles and modes of public transportation by patrons of the Resort, the use of alternative fuel vehicles or biofuels, or both, and the development or purchase of carbon offsets. These efforts shall be in addition to transportation planning efforts described in Article XIII.

E. Historic Columbia River Highway.

The Tribe and the State agree to work together to avoid adverse impacts on the Historic Columbia River Highway that may be caused by the Resort. The Tribe agrees to pay the reasonable costs of any necessary improvements to the Historic Columbia River Highway as provided in Article XIII, Section H.

F. Impacts on Recreational Uses in the Columbia River Gorge National Scenic Area.

The Tribe is sensitive to and mindful of the recreational uses of the surrounding Columbia River Gorge National Scenic Area and shall conduct its activities in such a manner so as to not unreasonably interfere with such uses.

G. Participation in Local Planning Discussions.

The Tribe agrees to participate with the Oregon Department of Land Conservation and Development, the City of Cascade Locks and Hood River County in any local planning processes involving the impact of the Resort on the City and local area.

H. Settlement of Hood River County Land Issues.

1. As part of the negotiated agreement authorizing Class III Gaming on the Cascade Locks Land, the Tribe and the State have agreed to settle a land dispute between the Tribe and the State and have agreed to the transfer of certain real

property rights and interests by the Tribe to the State, as more fully described in this Section H. The Tribe agrees to forego and waive any future claim of legal right to conduct gaming on the Hood River Trust Land. The settlement of the land dispute, the Tribe's waiver of any right to conduct gaming on the Hood River Trust Land and the recording of the conveyance documents required by this Section H are conditions precedent to authorization of Class III Gaming on the Cascade Locks Land contained in this Compact. The Tribe shall execute and record all conveyance documents required by this Section H no later than thirty (30) calendar days following the date on which the decision to take the Cascade Locks Land into trust by the United States for gaming purposes becomes final and unappealable.

2. Hood River Fee Lands. As more fully described in a memorandum of understanding to be executed by the parties, the Tribe agrees to execute and record all documents necessary to:

a. Grant to the State a perpetual conservation easement to the Hood River Fee Lands that prohibits gaming on or the future development (except limited recreational development as agreed to by the parties in the terms of the easement) of such lands, and

b. Transfer to the State the greatest ownership interest in the Hood River Fee Lands that the Tribe can lawfully transfer. The transfer shall be to the State of Oregon, through the Oregon Parks and Recreation Department, and shall be in a form acceptable to the State.

3. Hood River Trust Land. The Tribe agrees to seek and obtain the execution and the recording of any and all documents necessary to grant to the State a perpetual conservation easement to the Hood River Trust Land that prohibits the future development (except limited recreational development as agreed to by the parties in the terms of the easement) of such land. The parties agree that the granting of a conservation easement to trust land requires action by the Secretary of the Interior. The Tribe agrees to seek immediately all necessary action by the Secretary of Interior to accomplish such conveyance.

4. Historic Columbia River Highway. The Tribe contends that the State's asserted title to a portion of the Historic Columbia River Highway (also known as the Historic Columbia River Highway Scenic Trail) and its buffer property may be defective and that such portion of the trail and buffer property may instead be part of land held in trust for the benefit of the Tribe. The State disagrees with the Tribe's legal assertion, and believes the State has full and clear legal title to such portion of the trail and buffer property. In order to settle this dispute, the Tribe agrees to waive and release all claims regarding the Historic Columbia River Highway and agrees to apply to the Secretary of Interior for approval of the grant to the State of an exclusive right of way through the purported trust property, mirroring the dimensions of the Historic Columbia River Highway and buffer property. The State's acceptance of this right of way shall not be deemed either

an admission that the Tribe has any interest in such trail and buffer property or a waiver of the State's legal position that the State has full and clear title to such trail and buffer property.

5. The State shall have no obligation to accept any easement, deed or other property right to any property if the State determines it does not desire to accept such property; however, in such event, the State retains the right to direct the transfer to a third party if the State so chooses.

6. The Tribe shall not grant any additional property rights or interests (e.g. easements, mortgages, liens, rights of way), or seek approval by the Secretary of the Interior for the transfer of additional property rights or interests, to either the Hood River Fee Lands or Hood River Trust Land without the prior written consent of the State.

ARTICLE XIII - TRANSPORTATION ISSUES.

A. The Tribe shall provide to the Oregon Department of Transportation ("ODOT") and the City of Cascade Locks a traffic impact study prepared by a qualified traffic engineer registered in the State of Oregon using methodologies approved by ODOT. The study shall evaluate the effect of the proposed Resort on the state highway system, including the Historic Columbia River Highway and Interstate 84, and on any city street or county road that may be used by customers as access to the Resort. The traffic impact study shall determine the impacts of the proposed Resort on the level of service of the affected highway(s), road(s) street(s), and affected railroad crossings.

B. A determination whether the Resort is to be served directly by a state highway or by a city street or county road shall be made by the State and appropriate local officials in consultation with the Tribe on a basis consistent with other proposed developments.

1. If access to the Resort is to be directly from a state highway, the Tribe shall apply for and obtain a road approach permit under Oregon Administrative Rules, Chapter 734, Division 51, and shall construct the approach and any other necessary improvements in accordance with that permit. A road approach permit shall not be denied because of the proposed use of the Tribe's land. The Tribe shall provide and maintain access from its Resort onto the highway that is adequate to meet standards of ODOT (freeway interchange spacing standards shall be addressed as provided in Section D of this Article), or shall enter into agreements with ODOT for the provision of such access by the State. The allocation of costs of constructing the road approach shall be as provided in Oregon Administrative Rule 734-051-0205, which provides that the costs of constructing the road approach shall be borne by the permit applicant.

2. If access to the Resort is to be directly from a city street or county road, and indirectly from a state highway, the Tribe shall comply with applicable city or

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county street or road improvement requirements and satisfy any requirements the State imposes on the county or city relating to access to a state highway.

C. Before any City Plan Amendments necessitated by transportation improvement plans related to the Resort, or in any event, before site plan approval, unless the Tribe and State agree otherwise, the Tribe and ODOT shall enter into a memorandum of understanding regarding Resort access, traffic improvements, maintenance of transportation infrastructure, cooperation regarding managing the effects of inclement weather on traffic safety in the vicinity of the Resort and any other transportation-related issues that may arise.

D. Traffic improvements shall be those improvements necessary to maintain the level of service of the affected highway(s), road(s) or street(s) as they existed prior to opening the Resort, and to provide safe access to and from the Resort. For highways, traffic improvements shall be consistent with the requirements of the State Highway Plan, including improvements necessary to mitigate traffic congestion, and to conform to ODOT access management policies, and Oregon Highway Plan Volume to Capacity Ratios (Table 6). With respect to the Oregon Highway Plan Interchange Spacing Standards (Tables 12 and 16), if it is determined that design exceptions to such standards must be pursued through ODOT and the Federal Highway Administration, ODOT agrees to facilitate, and support if appropriate, the application process by the Tribe or the City of Cascade Locks, or both, to secure approval of such design exceptions. The Tribe will confer with ODOT, the Oregon Department of Land Conservation and Development and local government on an Interchange Area Management Plan.

E. Traffic improvements shall also be consistent with other applicable laws, including the following:

1. Federal Highway Administration standards related to Interstate 84.

2. The National Historic Preservation Act, 16 USC § 470 *et seq*.

3. The Gorge Act.

F. If ODOT determines that highway improvements are necessary, ODOT shall confer with the Tribe concerning the planning, design and construction of those improvements. ODOT shall confer with the Tribe concerning impacts to Interstate 84 and the need for traffic improvements to provide a visually cohesive appearance that embodies the aesthetic goals of the Columbia River Gorge National Scenic Area. The Tribe shall plan, design and construct any such improvements in accordance with ODOT's Interstate 84 Corridor Strategy Features Design Guideline.

G. The Tribe shall pay the reasonable cost of street, road and highway improvements determined to be necessary on the basis of the traffic impact study and ODOT requirements. If the Tribe disputes the amount of costs to be paid by the Tribe, the Tribe may initiate the dispute resolution procedure established under Article XVII.

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H. The Tribe and the State agree to work together to avoid any adverse impacts on the Historic Columbia River Highway that may be caused by the Resort. The Tribe agrees to pay the reasonable cost for any improvements to the Historic Columbia River Highway determined to be necessary on the basis of the traffic impact study, and ODOT requirements. In accordance with Section 106 of the National Historic Preservation Act, the Tribe will confer with ODOT and the Oregon State Historic Preservation Officer to mitigate project impacts that may adversely affect the Columbia River Highway Historic District. If the Tribe disputes the amount of costs to be paid by the Tribe, the Tribe may initiate the dispute resolution procedure established under Article XVII.

I. If the Tribe plans additional development of the Resort, the Tribe shall advise the appropriate state and local transportation planning officials of the planned development by submitting a master plan. In planning street, road and highway improvements, the Tribe, state and local transportation planning officials shall plan for improvements using the master plan. Construction of street, road and highway improvements may be completed in phases if practicable, and shall be consistent with this Article XIII.

J. The Tribe agrees to consult and cooperate with ODOT regarding any traffic issues arising out of the Resort and vehicles that patronize the Resort. The Tribe agrees to negotiate and execute an agreement with the governmental entity with jurisdiction over the impacted roads that covers the Tribe's contribution toward mitigating any traffic impacts on surrounding city, county or state roads.

ARTICLE XIV - TRIBAL LABOR RELATIONS ORDINANCE

A. Within six months following approval of this Compact by the Secretary of Interior the Tribe shall adopt and enforce an ordinance regulating labor-management relations at the Resort ("Tribal Labor Ordinance"). The Tribal Labor Ordinance shall contain the provisions set out in Section C of this Article.

B. The Tribal Labor Ordinance shall be an exclusive alternative to the National Labor Relations Act (29 USC §§ 151 through 169). Any union, union representative or labor organization that seeks to invoke the jurisdiction of the National Labor Relations Board (NLRB) may, at the Tribe's discretion, be barred by the Tribe from utilizing the processes and procedures set out in the Tribal Labor Ordinance. If a union or labor organization seeks to utilize the processes and procedures set out in the Tribal Labor Ordinance, such union or labor organization is encouraged to, and the Tribal Gaming Operation agrees to, enter into a recognition and neutrality agreement containing the provisions of the Tribal Labor Ordinance and any other provisions mutually agreed upon, in order to assist in enforcement of the Tribal Labor Ordinance by providing federal court jurisdiction under 29 USC § 185(a).

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C. The following provisions shall be contained in the Tribal Labor Ordinance:

1. Recognition of any bargaining unit by a standard card check process (meaning the signing of cards by a majority of eligible workers), overseen by a neutral arbitrator. Standards for organizing, forming a bargaining unit and determining validity of the card check recognition process shall be consistent with those of the NLRB.

2. An eight month grace period following the commencement of Class III Gaming at the Gaming Facility, during which there shall be no union organizing efforts, and during which the Tribe shall maintain employer neutrality regarding organization.

3. Resolution of all collective bargaining issues that reach impasse by binding interest arbitration, based on either the labor organization's or management's last best offer.

4. Provision for exclusion of the following issues from collective bargaining: Tribe's employment preferences policy (see Tribal Council Resolution No. 8363 (Feb. 25, 1992)) and Tribe's Drug and Alcohol Free Workplace policy (see Tribal Council Resolution No. 7716 (Nov. 15, 1988)).

5. Provision for issues that may be considered by an arbitrator in the resolution of a collective bargaining impasse include:

a. wages, hours and other terms and conditions of employment of the Tribal Gaming Operation's competitors, or other businesses in Oregon and other states;

b. size and type of the Resort's operations;

c. ability of management to pay, if placed at issue by management (provided, however, that the labor organization shall be required to keep such information confidential);

d. regional and local market conditions;

e. ability of employees, through a combination of wages, hours and benefits to sustain themselves and their families;

f. cost of living based on statewide index;

g. factors uniquely applicable to the security needs of a gaming facility; and

h. any stipulations of the parties.

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6. Prohibition of strikes (including boycotts, pickets, corporate campaigns, etc.) and lockouts.

7. Reasonable provision for access within the Resort to lunch rooms and break rooms for a reasonable number of union organizers, after providing notice. If a labor organization seeks such access within the Resort, then the Tribal Gaming Commission may require the labor organization and union organizers to be subject to the same licensing rules that apply to Low Security Employees with similar levels of access within the Resort; provided, however, that such licensing requirements are reasonable, non-discriminatory and are not designed to impede access and any fees charged for such licensing are commensurate with fees charged to other individuals or organizations.

8. The Tribe may exclude the following classes of employees from the bargaining unit: security employees, commissioners and employees of the Tribal Gaming Commission, tribal government employees, handlers of cash related to Class III Gaming, cage personnel, dealers, auditors, supervisors (as defined in 29 USC § 152(11)), and any employees excluded under the NLRA.

9. After a grace period of eight months from the commencement of Class III Gaming at the Gaming Facility, and upon written request of a labor organization, provision for the Tribe to provide a labor organization with names, addresses and work classifications of eligible employees.

10. Provision that enrolled members of the Tribe may choose to not join a union or to pay dues or fair share fees to a union.

11. Provision for Unfair Labor Practices (ULPs) that are the same as those provided under the NLRA. Procedures regarding rules of evidence, statute of limitations, burden of proof and standards for determining the validity of ULP charges shall be based on the procedures and standards of the NLRB.

12. Provision for the award of fines by an arbitrator against either the Tribe or a labor organization of up to $20,000 for ULPs and provision for the award of fines by an arbitrator against the Tribe of up to $20,000 for violation of the employer neutrality described in Section C(2) of this Article.

13. Provision for decertification according to the procedures provided in the NLRA.

14. A process mutually agreeable to the parties for enforcement of an arbitrator's award or order and a process to challenge the legality of an arbitrator's decision; such processes must include ultimate recourse to a federal court, or if a federal court declines jurisdiction, to another court of competent jurisdiction.

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15. Other provisions mutually agreed to by the Tribe and the State.

D. The Tribal Labor Ordinance shall not contain provisions that are unlawful under the NLRA. The Tribe shall revise any provisions of the Tribal Labor Ordinance that are determined by a court or administrative body of competent jurisdiction to be unlawful under the NLRA to assure compatibility with the NLRA. The Tribal Labor Ordinance shall always provide for union recognition through card check to the fullest extent permissible under the NLRA, to the extent the NLRA applies to the Tribal Gaming Operation, or other applicable law.

E. Nothing in this Compact or in the Tribal Labor Ordinance shall be interpreted as expressing the Tribe's consent to application of the NLRA. If it is determined by a court or administrative body of competent jurisdiction that the NLRA does not apply to the Gaming Complex or does not apply to the Resort, or if federal law is amended to exempt either the Gaming Complex or the Resort, or portion(s) thereof, from the NLRA, the terms of the Tribal Labor Ordinance and the requirements of this Article XIV shall remain in effect nonetheless.

F. The Tribe shall consult with the State regarding the development of the Tribal Labor Ordinance. Class III Gaming at the Gaming Facility may not commence until the Tribe has adopted a Tribal Labor Ordinance and the Tribe and State have mutually agreed that the Tribal Labor Ordinance is in compliance with this Compact. The State's agreement shall not be unreasonably withheld. Failure of the State to object to the terms of a proposed Tribal Gaming Ordinance within 30 calendar days following presentation to the State by the Tribe of the final Tribal Gaming Ordinance shall be deemed agreement.

ARTICLE XV – TRIBAL REVENUE SHARING PAYMENTS

A. In consideration for the economic benefits and exclusive rights provided by this Compact, for the right to conduct Class III Gaming on the Cascade Locks Land with the requested scope of Class III Gaming, for the perpetual nature of this Compact, for the resolution of issues regarding the Tribe's right to conduct Class III Gaming on the environmentally-sensitive Hood River Trust Land and the ownership of the portion of the Historic Columbia River Highway passing through the Hood River Trust Land without costly or prolonged litigation, for a compact that authorizes Class III Gaming at an economically-desirable location, and for the other meaningful concessions offered by the State in the course of good faith negotiations, the Tribe has agreed to share, on a sovereign government-to-government basis, a portion of its revenues from the Gaming Facility, as more fully described in this Article.

B. So long as the conditions described in Section C of this Article are satisfied, the Tribe shall make payments in the amounts provided in Section D of this Article.

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C. Conditions.

1. The payments required by this Article are required only so long as there is a binding Class III Gaming compact in effect between the State and Tribe that allows for Class III Gaming on the Cascade Locks Land.

2. The payments required by this Article are required only so long as no non-Indian casino is operated in the State pursuant to a change in the Oregon Constitution that allows the operation of such a non-Indian casino in the State. However, this condition does not apply to an expansion of the Oregon State Lottery unless such expansion is accomplished through a constitutional amendment that permits the operation of a casino.

3. If any other federally-recognized Indian tribes are allowed to operate gaming facilities pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon, then, in each instance, all future Revenue Share payments required by this Article shall be subject to modification as described below:

a. A testing period shall be established which shall be the twenty-four (24) month period following the opening of any such other facility(ies) (the "Testing Period"), subject to Sections C(3)(f) and (g) of this Article. The base period for calculation purposes described below (the "Base Period") shall be the most recent Fiscal Year prior to the start of the Testing Period.

b. If, at the end of the Testing Period, the Tribe can demonstrate consistent with Section G of this Article, that the annual Net Win of the Gaming Facility was reduced by twenty-five percent (25%) or more from the annual Net Win of the Base Period, then the Tribe's Revenue Share payment obligation under Section D(1) of this Article will be reduced by the same percentage that Net Win was reduced during the Testing Period. Such reduction shall apply to all Revenue Share payments due thereafter.

c. If the Revenue Share amount that was paid for any of the Fiscal Years during the Testing Period was greater than the amount that should have been paid based on the modified rate calculated pursuant to Section C(3)(b) of this Article, then the Tribe shall receive a credit equal to such excess amount that shall be applied to any future Revenue Share payments required by this Article.

d. If Section C(3)(b) of this Article is triggered and it is determined at the end of the Testing Period that the annual Net Win from the Gaming Facility was reduced by fifty percent (50%) or more from the annual Net Win of the Base Period, then the Revenue Share payment obligation under Section D(1) of this Article shall be adjusted as follows:

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i. If such Testing Period and reduction occurs during the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, then the Revenue Share payment obligations shall be suspended and forgiven through the ninth (9th) Fiscal Year;

ii. If such Testing Period and reduction occurs after the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, then the Revenue Share payment obligations for the next two (2) Fiscal Years shall be half of the amount that would otherwise be due after giving effect to the reduction under Section C(3)(b) of this Article; and

iii. After giving effect to the suspensions as described in Sections C(3)(d)(i) and (ii) of this Article, the Revenue Share payment obligations shall recommence as modified pursuant to Section C(3)(b) of this Article.

e. For purposes of Sections C(3)(b) and (d) of this Article, a direct causal connection between the new facility(ies) and the decline in Net Win of the Facility shall be presumed, but the State may invoke the dispute resolution procedure established under Article XVII to present evidence that other unrelated factors contributed to the decline. However, any material increase from the Base Period to the Testing Period in the payment of Participation Fees (meaning an increase of more than ten percent (10%) of the total amount of Participation Fees paid) shall be disregarded for purposes of demonstrating a decline in annual Net Win.

f. If, during any Testing Period, another federally-recognized Indian tribe commences operation of a gaming facility pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon, then the Testing Period shall be extended to cover the 24-month period following the opening of such other facility(ies).

g. If, during any Testing Period, a tribal gaming facility that has been authorized under 25 USC § 2719(b)(1)(A) undergoes a material expansion (meaning an increase in the number of VLTs either by more than 500 or by more than fifty percent (50%) of the number of VLTs before the increase, whichever is less), then the Testing Period shall be extended to cover the 24-month period following such expansion.

h. If the Testing Period is extended pursuant to Section C(3)(g) of this Article, then on any Revenue Share Payment Date that occurs prior to the end of the expanded Testing Period, the Tribe may make an interim reduction of its payment obligation as provided in Section C(3)(b) or (d) of this Article as if the Testing Period were deemed concluded as of such date. If the State proves that the Revenue Share amount that was paid for

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any Fiscal Years during the Testing Period was less than the amount that should have been paid based on the modified rate calculated pursuant to Section C(3)(b) of this Article, then the Tribe shall pay such excess amount over the next five (5) Fiscal Years.

i. If another federally-recognized Indian tribe commences operation of a gaming facility pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon prior to establishment of a Base Period, then the State and the Tribe shall negotiate in good faith, based on financial information considered by the parties during the negotiating of this Compact and any additional relevant information provided by the parties, to reach agreement on what the annual Net Win of the Gaming Facility could reasonably have been projected to be for the one-year period in question prior to opening of the competing facility (the "Assumed Net Win"). The Tribe may reduce its Revenue Share payments in the manner described in Sections C(3)(b) and (d) of this Article using the Assumed Net Win (rather than the actual Net Win) measured against a 24-month testing period that begins on the date Class III Gaming commences at the Gaming Facility.

D. Amount of Revenue Share.

1. Except as otherwise provided in this Article, the Tribe shall pay the following amounts:

a. Fiscal Years One though Seven. For each of the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, the Tribe shall pay annually:

i. Six percent (6%) of Net Win for the first one dollar ($1) to one hundred sixty million dollars ($160 million) of Net Win;

ii. Twelve percent (12%) of Net Win for the next one dollar ($1) to forty million dollars ($40 million) of Net Win; and

iii. Seventeen percent (17%) of all Net Win in excess of two hundred million dollars ($200 million).

b. Fiscal Years Eight and beyond. Beginning with the eighth Fiscal Year following commencement of Class III Gaming at the Gaming Facility and for each Fiscal Year thereafter, the Tribe shall pay annually an amount equal to seventeen percent (17%) of all Net Win.

2. Deferral Option.

a. If the amount due and payable under this Article for any of the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility exceeds fifty percent (50%) of Cash From Operations

EXHIBIT 3 to
Declaration of Klint A. Cowan in Support of Defendants Chief Bunch and Mekko Givens' Motion for Summary Judgment

TRIBAL-STATE COMPACT FOR REGULATION OF CLASS III GAMING BETWEEN THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON AND THE STATE OF OREGON

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TRIBAL-STATE COMPACT FOR REGULATION OF CLASS III GAMING BETWEEN THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON AND THE STATE OF OREGON

ARTICLE I – TITLE

This Compact is made by and between the Confederated Tribes of the Warm Springs Reservation of Oregon, a federally-recognized Indian tribe (hereinafter "Tribe"), and the State of Oregon acting by and through the Governor (hereinafter "State"), and pertains to Class III gaming to be conducted on lands pursuant to the Indian Gaming Regulatory Act, 25 USC § 2701 *et seq.* ("IGRA"). The terms of this Compact are unique to the Tribe. The authorization of Class III Gaming pursuant to this Compact is contingent upon the Tribe's successful application to have the Cascade Locks Land (as defined in this Compact) taken into trust for the Tribe to use for Class III Gaming under IGRA pursuant to 25 USC § 2719(b)(1)(A).

ARTICLE II – RECITALS

A. The Parties.

1. The Tribe is a federally-recognized Indian tribe and is the beneficial owner of, and government for, the trust lands of the Tribe located in the State of Oregon.

2. The Tribe is the legal successor-in-interest to the seven tribes and bands of Wasco and Walla-Walla Indians signatory to the Treaty with the Tribes of Middle Oregon of June 25, 1855, 12 Stat. 951 (the "1855 Treaty"). In the 1855 Treaty the signatory tribes ceded to the United States title to their aboriginal homelands along the Columbia River and its Oregon tributaries, the Hood, Deschutes and John Day rivers, as well as other portions of north central Oregon, totaling approximately ten million acres.

3. The State and the Tribe are separate sovereigns and each respects the laws of the other sovereign.

4. The State's public policy concerning gaming is reflected in the Constitution, statutes and administrative rules of the State, which, at the time of execution of this Compact, authorize a variety of games classified as Class III Gaming under IGRA.

5. The Tribe's public policy, as reflected in its Constitution and Bylaws, includes the powers of the Tribal Council to negotiate with state government, manage the economic affairs of the Tribe and protect the health, security and general welfare of the members of the Tribe.

6. The Tribe is authorized to act by and through ordinances and resolutions adopted by its Tribal Council, subject to the referendum powers of the members of the Tribe, under the Tribe's Constitution and Bylaws adopted pursuant to the Indian Reorganization Act, 25 USC §§ 461 *et seq*.

7. The State of Oregon is authorized to act by and through the Governor of the State.

B. IGRA.

1. The United States Congress enacted IGRA in 1988.

2. IGRA sets forth federal policy regarding Indian gaming and provides a statutory basis for the operation of Class III Gaming by the Tribe as a means of promoting tribal economic development, self-sufficiency, and strong tribal government.

3. IGRA provides that Class III Gaming activities are lawful on tribal lands only if such activities are:

a. located in a state that permits such gaming for any purpose by any person, organization or entity;

b. authorized by tribal ordinance;

c. conducted in accordance with a tribal-state compact; and

d. conducted on "Indian lands" within the meaning of IGRA.

4. IGRA creates a framework for agreements between Indian tribes and states regarding the regulation of Class III Gaming as defined in IGRA.

5. IGRA provides a statutory basis for the conduct and regulation of gaming by the Tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Tribe is the primary beneficiary of the gaming revenues, and to ensure that gaming is conducted fairly and honestly by both the operators and players.

C. Regulatory Roles.

1. The success of tribal gaming depends upon public confidence and trust that the Tribal Gaming Operation is conducted with fairness, integrity, security and honesty, and is free from criminal and corruptive influences.

2. Public confidence and trust can be maintained only if there is strict compliance with all laws and regulations related to the Tribal Gaming Activities, by all persons involved in the Tribal Gaming Operation.

3. The relationship between the State and the Tribe rests on mutual trust and the recognition that each has a duty to protect the gaming public through separate, appropriate responsibilities during the life of current and future compacts.

4. This Compact details the division of regulatory, oversight and monitoring roles agreed to by the parties.

5. The division of regulatory, oversight and monitoring roles in this Compact reserves for the Tribe the primary responsibility for regulating Class III Gaming on tribal land; however, this Compact provides the State of Oregon, acting through the Oregon State Police, with important monitoring and oversight responsibilities to assure the fairness, integrity, security and honesty of the Class III Gaming.

6. The Tribe and the State agree that the state functions of monitoring and oversight of tribal gaming operations in the State of Oregon will be funded fully by the Oregon Indian gaming tribes, as more fully described in this Compact.

D. Class III Gaming on the Tribe's Reservation.

1. On January 6, 1995, the Tribe and the State executed the Tribal-State Government-to-Government Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon, which was approved by the Secretary of Interior, effective March 13, 1995, and has been amended by the parties from time to time (the "Reservation Compact").

2. The Reservation Compact provided for Class III gaming to take place at the Tribe's Kah-Nee-Ta Lodge or at a "Permanent Gaming Facility" on the Warm Springs Reservation.

3. The Tribe established a Gaming Facility at Kah-Nee-Ta Lodge and is currently conducting Class III gaming there, but never established a "Permanent Gaming Facility."

4. The Reservation Compact provided that the Tribe waived any right to game at another location or facility for a period of three years, and also provided that either party could request renegotiation to amend, repeal or replace the Reservation Compact.

5. On April 6, 2005, the Tribe and State executed an amended and restated Compact for Class III gaming at Kah-Nee-Ta Lodge, which was approved by the

Secretary of Interior June 1, 2005, effective March 1, 2006 (the "Kah-Nee-Ta Compact").

6. The Tribe has offered to close the Class III Gaming facility at the Kah-Nee-Ta Lodge as more fully described in this Compact.

E. Hood River Lands.

1. In general, IGRA allows Class III Gaming only on lands that were held in trust by the United States for the benefit of a tribe prior to October 17, 1988, unless certain exceptions are satisfied. One of the exceptions in IGRA that permits Class III Gaming on lands acquired after October 17, 1988 by the United States applies if the Secretary of the Interior determines that gaming on such land is in the best interest of the tribe and its members and would not be detrimental to the surrounding community, and if the Governor of the State concurs in that determination.

2. The Tribe claims the right under IGRA to conduct Class III Gaming and to negotiate with the State for a Class III Gaming facility on certain land which was taken into trust by the United States for the benefit of the Tribe before 1988 and is located just outside of the city limits of the City of Hood River (the "Hood River Trust Land") and within the Columbia River Gorge Scenic Area, and which is more fully described in Exhibit A.

3. The Tribe has also acquired the parcels of land described in Exhibit B, which are located in the vicinity of the Hood River Trust Land (the "Hood River Fee Lands"). The Tribe is seeking to have the Hood River Fee Lands taken into trust by the United States for the benefit of the Tribe.

4. The Tribe also claims ownership of the portion of the Historic Columbia River Highway that passes through the Hood River Trust Land, which claim the State disputes.

5. The State has established and manages the Historic Columbia Highway State Trail, a portion of which, including the Mark O. Hatfield Trailhead, is located close to the Hood River Trust Land and the Hood River Fee Lands. On behalf of the State, the Governor believes that commercial development in the vicinity of the Mark O. Hatfield Trailhead would be inconsistent with, and not in the best interest of, the recreational use and purpose of the trail.

6. The Hood River Trust Land and Hood River Fee Lands are scenic lands located within the Columbia River Gorge Scenic Area. The Hood River Trust Land and Hood River Fee Lands are not located within the city limits or urban growth boundary of the City of Hood River. The Hood River Fee Lands are subject to the Gorge Act's land management plan, 16 USC § 544d, although the

Hood River Trust Land was exempted from the Gorge Act when enacted because it is Indian trust land. 16 USC § 544(o)(7).

7. Hood River County and the City of Hood River are opposed to the development of a gaming facility on the Hood River Trust Land or Hood River Fee Lands, as demonstrated by correspondence from the City of Hood River and Hood River County Board of Commissioners Resolution Nos. 824 and 1029, attached to this Compact as Exhibits C and D, respectively.

8. On behalf of the State, the Governor is opposed to the development of a gaming facility on the Hood River Trust Land or the Hood River Fee Lands and does not believe that it would be in the best interests of the surrounding community or the State for a gaming facility to be located on those lands.

9. The Tribe has offered to forego any right to conduct Class III Gaming or to negotiate with the State for a compact authorizing Class III Gaming on the Hood River Trust Land as qualified Indian land under IGRA if another suitable location is agreed upon by the Tribe and the State. The Tribe has proposed certain lands within the city limits and urban growth boundary of the City of Cascade Locks, as described in Exhibit E (the "Cascade Locks Land"), as a suitable location. On March 29, 2004, the Tribe formally requested that the State enter negotiations with the Tribe, pursuant to IGRA, for a gaming compact authorizing Class III Gaming on either the Hood River Trust Land or the Cascade Locks Land.

10. The City of Cascade Locks is a small, rural, economically-depressed community approximately forty-two miles east of Portland, Oregon. Cascade Locks is located in Hood River County seventeen miles west of the Tribe's Hood River Trust Land and Hood River Fee Lands. Cascade Locks is also thirty-eight miles north of the Tribe's Warm Springs Indian Reservation. Cascade Locks is within the area ceded to the United States by the Tribe in the 1855 Treaty. As described Section E(14) of this Article, tribal members exercise important treaty rights in the area Cascade Locks.

11. Hood River County and the City of Cascade Locks support the development of a gaming facility on the Cascade Locks Land, as demonstrated by Hood River County Board of Commissioners Resolution No. 1029 (June 4, 2001) and Cascade Locks City Council Resolution No. 856 (January 11, 1999), attached to this Compact as Exhibits D and F, respectively.

12. Based upon all the circumstances currently known or anticipated, including final resolution of issues regarding location of a gaming facility and title to and protection of certain lands in the Columbia River Gorge, without costly or prolonged litigation, the Governor, on behalf of the State, believes that it is not detrimental to the surrounding community and is in the best interests of the Tribe and the State to negotiate a compact authorizing Class III Gaming on the Cascade

Locks Land rather than the Hood River Trust Land, conditioned upon the Cascade Locks Land being taken into trust by the United States for the benefit of the Tribe for gaming purposes and subject to all of the agreements and promises contained in this Compact.

13. As part of this negotiated agreement authorizing Class III Gaming on the Cascade Locks Land, all as more fully described in this Compact, the Tribe has agreed:

a. to convey to the State a perpetual conservation easement over the Hood River Trust Land to prevent gaming or other future development of that land (except limited recreational development);

b. to convey to the State the greatest interest legally permissible to the Hood River Fee Lands; and

c. to convey to the State a perpetual road easement in order to settle the parties' dispute regarding title to the Historic Columbia River Highway.

14. Cascade Locks is part of the aboriginal homeland of the 1855 Treaty signatory tribes and is within the exterior boundaries of the territory ceded to the United States in Article 1 of the Treaty. Warm Springs tribal members exercise off-reservation fishing rights in the Columbia River at Cascade Locks pursuant to Article 1 of the 1855 Treaty. See *United States v. Oregon,* 718 F.2d 299 (9th Cir. 1983). Such treaty fishing rights are federally protected property rights and include a right of access to the fishing grounds over private property. *See United States v. Winans*, 198 U.S. 371 (1905). Cascade Locks is also the location of a Columbia River "Treaty Fishing Access Site" created by Congress for the exclusive use of Warm Springs and three other Columbia River treaty fishing tribes. P.L. 100-581, Title IV. The judgment in Indian Claims Commission Docket No. 198 provides that Cascade Locks is within the boundaries of the Tribe's aboriginal lands. The Indian Claims Commission judgment held that the Indian signatories to the Warm Springs 1855 Treaty possessed exclusive and continuous use and occupancy of the Cascade Locks area prior to and at the time of the 1855 Treaty. *Confederated Tribes of the Warm Springs Reservation of Oregon v. United States*, 18 Ind. Cl. Comm. 354; *Confederated Tribes of the Warm Springs Reservation of Oregon v. United States*, 177 Ct. Cl. 184, 1966 WL 8893 (Ct.Cl. 1966).

15. The Tribe has identified the following features of the Cascade Locks Land that makes it uniquely appropriate for the development of a gaming facility pursuant to the negotiated terms of this Compact:

a. the Cascade Locks Land is located within the Tribe's aboriginal lands according to the judgment of the Indian Claims Commission in Docket No. 198, and is within the Tribe's 1855 Treaty ceded territory;

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b. the Cascade Locks Land is located on the Columbia River where tribal members exercise treaty fishing rights as noted in *United States v. Oregon*, 718 F.2d 299 (9th Cir. 1983);

c. the City of Cascade Locks is a rural, economically-depressed community that supports the development of a gaming facility;

d. Hood River County supports the development of a gaming facility on the Cascade Locks Land;

e. developing a gaming facility on the Cascade Locks Land allows the Tribe to resolve the issue of the location of the Tribe's gaming facility and to resolve other issues regarding land in Hood River County without costly or prolonged litigation;

f. the Cascade Locks Trust Land is industrial land suitable for the development of a gaming facility within the urban growth boundary of the City of Cascade Locks;

g. the Cascade Locks Land is approximately forty-two miles east of Portland, Oregon, along Interstate 84;

h. the Cascade Locks Land is seventeen miles west of the Tribe's Hood River Trust Land and Hood River Fee Lands and is thirty-eight miles north of the Tribe's Warm Springs Indian Reservation. The Cascade Locks Land has been determined by the Bureau of Indian Affairs to be a commutable distance from the Tribe's Reservation (See Exhibit I); and

i. The Cascade Locks Land is located within Hood River County, which is part of the Bureau of Indian Affairs designated Service Area for the Confederated Tribes of the Warm Springs Reservation of Oregon. Federal Register, Vol. 75, No. 184, Thursday, September 23, 2010, page 57976.

F. Columbia River Gorge.

1. The Tribe and the State share an interest in protecting and enhancing the scenic, cultural, recreational and natural resources of the Columbia River Gorge National Scenic Area and desire to minimize any possible adverse impact of the Gaming Facility on the Scenic Area.

2. This Compact allows the Tribe and the State to protect perpetually the Hood River Trust Land and Hood River Fee Lands by preventing the construction of a gaming facility or other development (except limited recreational development) on those lands.

3. The Cascade Locks Land is currently zoned as industrial land and is located in the Port of Cascade Locks Industrial Park, which is within the boundaries of the City of Cascade Locks and the Cascade Locks Urban Area as defined in 16 USC § 544b(e), and therefore is not subject to the Gorge Act's land management plan, 16 USC § 544d(c)(5)(B).

4. Development of the Gaming Facility in the Cascade Locks Urban Area furthers the Gorge Act's purposes of encouraging economic development in urban areas within the Columbia River Gorge that is consistent with protection and enhancement of the Columbia River Gorge's scenic, cultural, recreational and natural resources. 16 USC § 544(a)(2).

5. Provisions of this Compact are intended to ensure that development of a gaming facility on the Cascade Locks Land is consistent with the environmental sensitivity and recreational uses of the Columbia River Gorge Scenic Area. In particular, this Compact dedicates a portion of the revenue from the Gaming Facility to preserving, protecting and enhancing natural and cultural resources within the Scenic Area.

G. Economic Benefits to the Community.

1. The Tribe intends to construct a resort on the Cascade Locks Land that is of the highest quality. In addition to gaming, the resort is expected to include a hotel, a spa, several restaurants, several meeting and entertainment venues and an interpretive nature trail. An outline of the footprint and a conceptual rendering of the Tribe's current plans for the Resort are attached as Exhibits G and H, respectively.

2. Economic development in this area of rural Oregon is a priority of the State, the Tribe and local government in Hood River County. The unemployment rate in rural Oregon, including Hood River County and on the Tribe's Warm Springs Reservation, is significantly higher than the nationwide and statewide unemployment rates.

3. It is anticipated that construction of the Resort will result in over four hundred temporary construction jobs and ultimately approximately one thousand seven hundred ongoing jobs at the Resort.

H. Economic Benefits to the Tribe.

Under Article XV, Section 4(12) of the Oregon Constitution, the Oregon legislature may not authorize non-Indian casinos in the State of Oregon. However, pursuant to federal law, all nine of the federally-recognized Indian tribes in Oregon operate gaming facilities on lands that qualify for gaming under IGRA without the two-part determination of 25 USC § 2719(b)(1)(A). The Cascade Locks Land is located approximately forty-two miles east of Portland, Oregon along Interstate 84. The terms of this Compact and the exclusive rights that the Tribe will enjoy will provide a significant economic benefit to

the Tribe. The revenue generated by this Gaming Facility is projected to be a substantial portion of the Tribe's revenues. In consideration for the economic benefits and exclusive rights provided by this Compact, for the right to conduct Class III Gaming on the Cascade Locks Land with the requested scope of Class III Gaming, for the perpetual nature of this Compact, for the resolution of issues regarding the Tribe's right to conduct Class III Gaming on the environmentally-sensitive Hood River Trust Land and the ownership of the portion of the Historic Columbia River Highway passing through the Hood River Trust Land without costly or prolonged litigation, for a compact that authorizes Class III Gaming at an economically-desirable location, and for the other meaningful concessions offered by the State in the course of good faith negotiations, the Tribe has agreed to contribute a portion of its revenues from the Gaming Facility to a fund benefiting the surrounding community and to a fund benefiting the people of Oregon, as more fully described in this Compact.

I. Concurrence.

If in connection with the fee-to-trust process for the Cascade Locks Land, the Secretary of Interior and the Governor determine, pursuant to 25 USC § 2719(b)(1)(A), that a gaming establishment on the Cascade Locks Land is in the best interest of the Tribe and its members, and that a gaming establishment at the Cascade Locks Land will not be detrimental to the surrounding community, then based on all of the agreements and promises contained in this Compact and satisfaction of any conditions precedent contained herein, the Governor will concur in taking the Cascade Locks Land into trust.

In consideration of the mutual undertakings and agreements of the parties, including but not limited to those set forth herein, the Tribe and the State agree as follows:

ARTICLE III – DEFINITIONS

Terms defined in singular form may also be used in plural form and vice versa. In addition to any terms that may be defined elsewhere in this Compact, the following terms apply to this Compact and have the following meanings:

A. "Approved Class III Game" means an Authorized Class III Game that has been specifically approved by the Tribal Gaming Commission and OSP to be offered by the Tribal Gaming Operation pursuant to Section V(F),including any game approved pursuant to Section V(F) after execution of this Compact. Approved Class III Games as of the date of execution of this Compact are those listed in Exhibit K.

B. "Authorized Class III Game" means a Class III Game that has been approved by OSP for play at a tribal gaming facility in Oregon pursuant to an Oregon Class III gaming compact, including any game approved after execution of this compact as provided in Section V of this Compact. Authorized Class III Games as of the date of execution of this Compact are those listed in Exhibit J.

C. "Background Investigation" means a security and financial history check for a Tribal Gaming License, whether the applicant is a prospective High Security Employee, Low Security Employee, Primary Management Official or Class III Gaming Contractor.

D. "Business Days" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific time, excluding State of Oregon holidays.

E. "Cascade Locks Land" means the land described in Exhibit E.

F.. "Certification" means the inspection process identified in the Minimum Internal Controls used by the State and the Tribe to approve Class III Gaming equipment for use in the Gaming Facility.

G. "Class II Gaming" means "class II gaming" as defined in 25 USC § 2703(7).

H. "Class III Gaming" or "Class III Games" means all forms of gaming that are not class I gaming or class II gaming as defined in 25 USC §§ 2703(6) and (7).

I. "Class III Gaming Contract" means a contract that involves Major or Sensitive Procurements.

J. "Class III Gaming Contractor" is any individual, business or other entity that applies for or is a party to a Class III Gaming Contract.

K. "Consultant" means any person who provides advice or expertise to the Tribe concerning the operation, management or financing of the Tribal Gaming Activities for compensation, except attorneys and accountants performing those functions. "Consultant" may be either an employee of the Tribal Gaming Operation or a Class III Gaming Contractor. "Consultant" does not include a Class III Gaming Contractor engaged for the purpose of training or teaching employees of the Tribal Gaming Operation or the Tribal Gaming Commission if the contract for those services is no greater than ninety (90) consecutive days in duration.

L. "Controlling interest" means fifteen percent (15%) or more of the equity ownership of a company.

M. "Counter Game" means keno and off-race course pari-mutuel wagering.

N. "Deposit Date" means a date not later than the 150th day following the end of each Fiscal Year.

O. "Fiscal Year" means the fiscal year of the Tribal Gaming Operation, which consists of a twelve-month period ending on each December 31st or such other twelve-month period designated in writing by the Tribe to the State.

P. "Fund Contribution" means the percentage of Net Win payable by the Tribe as provided in Article XV.

Q. "Gaming Area" means any area of the Gaming Facility in which Class III Gaming is conducted, or areas where patrons' transactions related to Class III Gaming are conducted. The Gaming Area includes the cage and adjacent areas that are not separated from the gaming floor by a physical barrier such as a wall, unless otherwise agreed to in writing by the parties to this Compact.

R. "Gaming Complex" means the Gaming Facility and any other functionally-related ancillary facilities (such as lodging, restaurants, gift shops, meeting and entertainment venues, and facilities in which other related activities occur) that are located on the Cascade Locks Land.

S. "Gaming Facility" means any building, structure or grounds used by the Tribe on Cascade Locks Land for Class III Gaming purposes and includes any property used to store Class III Gaming equipment.

T. "Gaming Related Criminal Activity" means any conduct constituting a violation of ORS 167.167 (Cheating) and any other criminal activity involving any controlled item related to, or used in the play of any Class III Gaming. For purposes of this definition, "controlled item" means any item used directly or indirectly in the play of a Class III Game that requires secure storage or restricted access, including but not limited to: Class III playing cards, dice, VLT paper, gaming chips, keno balls, credit/fill slips, hand pay slips, and keys.

U. "Gorge Act" means the Columbia River Gorge National Scenic Area Act, 16 USC § 544, *et seq*.

V. "Governor" means the Governor of the State of Oregon.

W. "High Security Employee" means any natural person who is an employee of the Tribal Gaming Operation and who participates in the operation or management of the Tribal Gaming Operation. "High Security Employee" includes but is not limited to: Tribal Gaming Operation administrators, managers and assistant managers, Gaming Facility surveillance or security personnel, dealers, croupiers, shift supervisors, cage personnel (including cashiers and cashier supervisors), drop and count personnel, Consultants who are Tribal Gaming Operation employees and who are not Low Security Employees, Primary Management Officials who are Tribal Gaming Operation employees, VLT technicians, junket representatives, information technology staff with access to on-line accounting systems, and any other person whose employment duties require or authorize access to areas of the Gaming Facility related to Class III Gaming and which are not otherwise open to the public.

X. "Hood River Fee Lands" means the land described in Exhibit B.

Y. "Hood River Trust Land" means the land described in Exhibit A.

Z. "IGRA" means the Indian Gaming Regulatory Act, 25 USC § 2701, *et seq*.

AA. "Kah-Nee-Ta Compact" means the Tribal-State Government-to-Government Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon dated April 6, 2005, which was approved by the Secretary of Interior June 1, 2005, effective March 1, 2006, or as later amended by the parties.

BB. "Key Employee" means any officer or any other person who may substantially affect the course of business, has authority to make decisions, or is in a sensitive position, such as a position that allows access to information or items that may affect the fairness, integrity, security or honesty of the Tribal Gaming Activities, in an organization or corporation that is a Class III Gaming Contractor or applicant for a Tribal Gaming License.

CC. "Low Security Employee" means any employee of the Tribal Gaming Operation whose duties require the employee's presence in the Gaming Area but who is not a High Security Employee and who is not involved in the operation of Class III Gaming. "Low Security Employee" includes but is not limited to employees who are Consultants who are Tribal Gaming Operation employees and who otherwise fall within the definition of "Low Security Employee." "Low Security Employee" does not include any employee of the Tribal Gaming Operation who is present in the Gaming Area for the sole purpose of conducting banking activities at the cage and whose duties do not require that employee to enter the cage.

DD. "Major Procurement" means any procurement action, arrangement, transaction or contract between the Tribe, the Tribal Gaming Commission, or the Tribal Gaming Operation and a manufacturer, supplier, Consultant who is not an employee of the Tribal Gaming Operation, Primary Management Official who is not an employee of the Tribal Gaming Operation, or management contractor, for the purchase of goods, services, licenses or systems that may directly affect the fairness, integrity, security or honesty of the Tribal Gaming Operation and administration of the Tribal Gaming Activities but that are not specifically identified as a Sensitive Procurement. "Major Procurements" include but are not limited to, procurement actions, arrangements, transactions or contracts:

1. For any goods, services or systems involving the receiving or recording of number selections or bets in any Class III Gaming, including but not limited to on-line accounting systems, Keno systems, other random number generation systems and off-track betting systems;

2. For any goods, services, or systems used to determine winners in any Class III Gaming;

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3. For purchase, installation, or maintenance of surveillance systems or other equipment used in monitoring Class III Gaming;

4. For licenses to use a patented Class III Game or Class III Game product;

5. For any goods, services or systems that are a part of or related to a computerized system responsible for receiving, processing or recording data from Tribal Gaming Activities or involved in printing or validating tickets; or

6. Involving or requiring commitments by either party to the procurement action, arrangement, transaction or contract such that there would be substantial financial consequences to one of the parties if the procurement action, arrangement, transaction of contract or procurement action is terminated prematurely. All procurement actions, arrangements, transactions and contracts involving consideration or value of $100,000 or more are deemed to result in substantial financial consequences to one of the parties if the procurement action, arrangement, transaction or contract action is terminated prematurely.

EE. "Minimum Internal Controls" means the Tribal/State "Minimum Standards for Internal Controls" attached as Exhibit L and as revised pursuant to Article IX, Section A.

FF. "Net Win" means, for any period, the total amount wagered on Class III Gaming, less total amounts paid out for all customer Class III Gaming winnings, and less total Participation Fees paid to Class III Gaming Contractors so long as the Tribe does not own and could not purchase or lease the same Class III Gaming devices on substantially similar economic terms without paying Participation Fees.

GG. "OSP" means the Gaming Enforcement Division, or that administrative unit, of the Oregon Department of State Police (commonly referred to as the Oregon State Police) established under ORS 181.020, charged with gaming enforcement responsibilities, or its successor agency established by law.

HH. "Owner" means any person or entity that owns five percent (5%) or more of the equity ownership of an entity, alone or in combination with another person who is a spouse, parent, child, or sibling of that person or who is a spouse, parent, child, or sibling of any officer or any person who can substantially affect the course of business, make decisions, or is in a sensitive position in that entity.

II. "Participation Fees" means the fees paid by the Tribe to Class III Gaming Contractors for the right to lease and offer for use or otherwise offer for use Class III Gaming devices.

JJ. "Previously Approved Game" means a game that has been offered pursuant to the Kah-Nee-Ta Compact during the one-year period prior to the opening of the Gaming Facility.

KK. "Primary Management Official" means any person who:

1. Has executive level management responsibility for part or all of the Class III Gaming, whether as an employee or under a Class III Gaming Contract for management services;

2. Has authority —

a. to hire and fire Class III Gaming supervisory employees; or

b. to set or otherwise establish policy for the Tribal Gaming Operation; or

3. Is the chief financial officer or other person who has financial management responsibility for the Tribal Gaming Operation.

LL. "Provisional Tribal Gaming License" means a license issued pursuant to Article VII, Section A(8).

MM. "Reservation Compact" means the Tribal-State Government-to-Government Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon dated January 6, 1995, which was approved by the Secretary of Interior effective March 13, 1995, and has been amended by the parties from time to time.

NN. "Resort" means the Gaming Complex and any other ancillary facilities marketed in connection with or related to the Gaming Complex, regardless of whether such facilities are located on the Cascade Locks Land, trust land, fee land or leased land. An outline of the footprint and a conceptual rendering of the Tribe's current plans for the Resort are attached as Exhibits G and H, respectively.

OO. "Sensitive Procurement" means any procurement action arrangement, transaction or contract between the Tribe, the Tribal Gaming Commission or the Tribal Gaming Operation and a manufacturer, supplier, Consultant who is not an employee of the Tribal Gaming Operation, a Primary Management Official who is not an employee of the Tribal Gaming Operation, or management contractor, for the purchase of goods, services or systems related to Tribal Gaming Activities of the kind or in the classes listed below. Sensitive Procurements include but are not limited to procurement actions, arrangements, transactions or contracts for the following goods, services and systems (some of which may otherwise fall within the definition of Major Procurement but are hereby excluded from Major Procurement):

1. Class III Gaming equipment such as cards, dice, keno balls, roulette wheels, roulette balls, chips, tokens, keno and VLT paper, Class III Gaming tables and table layouts;

2. VLT replacement parts that do not affect the outcome of the game including bill acceptors, printers, monitors, locks and keys for secure storage areas or Class III Gaming devices, individual surveillance cameras, or individual surveillance recording devices.

3. Design of surveillance systems.

4. Class III Gaming consulting or training services, excluding procurement actions, arrangements, transactions or contracts with attorneys, accountants, and political or public relations consultants.

5. Any other goods, services and systems, including goods, services and systems otherwise within the definition of Major Procurement, that OSP and the Tribal Gaming Commission agree are a Sensitive Procurement.

PP. "Table Game" means any individual Class III Game allowed under this Compact except VLTs, keno, off-race course pari-mutuel wagering, and race book.

QQ. "Tribal Business Entity" means a business enterprise formed under the Tribe's Federal Corporate Charter or Constitution, a corporation, a partnership, or any other entity formed under tribal, state or federal law, whereby the Tribe conducts business activities.

RR. "Tribal Council" means the governing body of the Tribe as established in Article IV of the Tribe's Constitution and Bylaws.

SS. "Tribal Gaming Activities" means the conduct and regulation of the Tribal Gaming Operation and all other tribal activities directly related to the operation of Class III Gaming.

TT. "Tribal Gaming Commission" or "Commission" means the entity established pursuant to tribal law with independent authority to regulate gaming activities on tribal lands.

UU. "Tribal Gaming License" means a license issued by the Tribal Gaming Commission to Primary Management Officials, High Security Employees, Low Security Employees and Class III Gaming Contractors in accordance with the requirements of this Compact.

VV. "Tribal Gaming Operation" means the Tribal Business Entity that operates Class III Gaming under tribal authority, and receives revenues, issues prizes and pays expenses in connection with Class III Gaming authorized under this Compact.

WW. "Tribal Gaming Ordinance" means the ordinance adopted by the Tribe to govern the conduct of Class III Gaming, as required by IGRA, including subsequent amendments.

XX. "Tribal Internal Controls" means the internal controls and standards adopted by the Tribal Gaming Commission to regulate the security of the Gaming Facility and the play of Class III Gaming.

YY. "Tribe" means the Confederated Tribes of the Warm Springs Reservation, a federally-recognized Tribe of Indians. As the context of this Compact may require, references to "Tribe" includes the Tribal Gaming Operation, the Tribal Gaming Commission, or a Tribal Business Entity, whichever term gives the intended meaning to the specific provision in which "Tribe" is used.

ZZ. "Video Lottery Terminal" or "VLT" means any electronic or other device, contrivance or machine where the game outcome decision-making portion of the overall assembly is microprocessor controlled wherein the ticket or game outcome is displayed on a video display screen, electronically controlled physical reels, or other electronic or electro-mechanical display mechanism and that is available for consumer play at the device upon payment of any consideration, with winners determined by the application of the element of chance and the amount won determined by the possible prizes displayed on the device and which awards game credits. Such device also displays both win amounts and current credits available for play to the player.

AAA. "Violation" means:

1. Failure to comply with any of the following: applicable federal, state or tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, and Tribal Internal Controls; or

2. A significant failure to comply with, or pattern of failures to comply with, the policies and procedures that implement and apply to the items listed under number 1, above.

ARTICLE IV – PRINCIPLES GOVERNING CLASS III GAMING

The Tribe and the State agree that maintaining the fairness, integrity, security and honesty of the Tribal Gaming Activities is essential both to the success of the enterprise and to satisfy the interests of the State and of the Tribe. The Tribe and the State agree that both have a responsibility to protect the citizens of this State who patronize the Gaming Facility from any breach of security of the Tribal Gaming Activities. Accordingly, all decisions by the Tribe, the Tribal Gaming Commission and the management of the Tribal Gaming Operation, concerning regulation and operation of the Tribal Gaming Facility, including those decisions expressly placed within the Tribe's discretion under the terms of this Compact, shall be consistent with each of the following principles:

A. Any and all decisions concerning regulation and operation of the Tribal Gaming Activities, whether made by the Tribe, the Tribal Gaming Commission or the management of the Tribal Gaming Operation, shall reflect the particularly sensitive nature of the Tribal Gaming Activities.

B. In order to maintain the fairness, integrity, security and honesty of the Tribal Gaming Activities, the Tribe, the Tribal Gaming Commission and the management of the Tribal Gaming Operation shall work diligently and take all reasonably necessary affirmative steps to prevent cheating and theft, and to protect the Tribal Gaming Operation from the influence of or control by any form of criminal activity or organization.

C. The fairness, integrity, security and honesty of the Tribal Gaming Activities shall be of paramount consideration in awarding contracts, licensing and hiring employees, and in making other business decisions concerning Tribal Gaming Activities. The Tribe, the Tribal Gaming Commission and the management of the Tribal Gaming Operation shall not make any decisions that compromise the fairness, integrity, security or honesty of the Tribal Gaming Activities.

D. Regulation and operation of the Tribal Gaming Activities shall be, at a minimum, consistent with generally-accepted industry standards and practices, in order to maintain the fairness, integrity, security and honesty of the Tribal Gaming Activities.

E. Both parties recognize that all representatives of both sovereign governments deserve to be treated with dignity and respect and commit that their representatives will conduct themselves in a professional manner in all contacts relating to this Compact.

ARTICLE V - AUTHORIZED CLASS III GAMING

A. Only Compact Between the Tribe and the State. This Compact shall be the only compact between the Tribe and State pursuant to IGRA for purposes of Tribal Gaming Activities at the Tribe's Gaming Facility, and any and all Class III Gaming conducted at the Gaming Facility shall be conducted pursuant to this Compact.

B. Authorized games.

1. Subject to, and in compliance with the provisions of this Compact, the Tribe may engage in the Approved Class III Games listed on Exhibit K. The Tribe may also engage in additional Authorized Class III Games pursuant to Section V(F) of this Compact. OSP will provide an updated list of Authorized Class III Games to the Tribe upon request or will regularly post updated lists in a publicly available medium such as OSP's website and will provide an updated list of Approved Class III Games upon request.

2. The Tribe may submit a written request to the State for authorization and approval to engage in any other Class III Gaming, any variations of Authorized

Class III Games, or any side-bet activities related to Class III Gaming, that have been approved by the Nevada Gaming Control Board, provided that the State permits such gaming for any purpose by any person, organization or entity. The State shall notify the Tribe in writing of approval or denial of the request within sixty (60) calendar days following its receipt of the request, and the State shall not arbitrarily deny any such request. Any Class III Gaming approved under this subsection is subject to, and must be in compliance with, the provisions of this Compact, including rules, procedures and internal controls at least as stringent as the Minimum Internal Controls.

3. The Tribe shall not offer any type of Class III Gaming other than those authorized pursuant to Sections B(1) and B(2) of this Article.

4. This Article V shall be construed consistent with federal classification of gaming activities. Any gaming activity classified by federal regulation as Class II Gaming shall not be subject to the provisions of the Compact except as provided in Section C(4) of this Article and in Article X, Section B(2).

5. The Tribe shall not permit or accept any wagers over the internet or by any telecommunications system or device, except to accomplish off-race course pari-mutuel wagering as permitted by state law.

6. The Tribe shall not offer sports bookmaking.

C. Gaming Location.

1. The Gaming Facility authorized by this Compact shall be located on the Cascade Locks Land, provided that the federal government takes the Cascade Locks Land into trust for the Tribe for gaming purposes pursuant to 25 USC § 2719(b)(1)(A). The Tribe shall conduct the Class III Gaming authorized under this Compact only in the Gaming Facility.

2. In accordance with State policy to authorize only one casino per tribe, the nine Class III Gaming compacts in the State of Oregon each authorize only one Class III casino per tribe. The parties to this Compact agree to continue the "one-casino-per-tribe" policy.

3. As of the execution date of this Compact, the Tribe is conducting Class III Gaming on lands within the Warm Springs Reservation pursuant to the Kah-Nee-Ta Compact. The Tribe and the State agree that the Kah-Nee-Ta Compact shall terminate at 12:01 a.m. on the date the Tribe first commences any Class III Gaming at the Gaming Facility, and at the same time the Tribe shall cease all Class III Gaming conducted under the Kah-Nee-Ta Compact. The Tribe acknowledges and agrees that the Tribe may maintain only one gaming facility and is not authorized to and shall not conduct any Class III Gaming at any location in the State of Oregon other than at the Gaming Facility. Specifically,

the Tribe acknowledges and agrees that the Tribe is not authorized to and shall not conduct any Class III Gaming on lands within the Warm Springs Reservation, nor shall the Tribe conduct any Class III Gaming on any trust lands in Hood River County other than at the Gaming Facility.

4. In order to maintain the "one-casino-per-tribe" policy stated in Section C(2) of this Article, the Tribe agrees to refrain from conducting gaming on the Warm Springs Reservation involving patron play on electronic or electro-mechanical machines that are substantially similar in appearance or operation to VLTs or slot machines and to refrain from asserting that such gaming is Class II Gaming. In addition, the Tribe agrees to refrain from denoting, marketing, advertising or taking any other actions to represent that gaming conducted on the Warm Springs Reservation is available at a "casino." The State acknowledges the Tribe's right to conduct bingo and other Class II Gaming on the Warm Springs Reservation, provided however, that such gaming does not involve patron play on electronic or electro-mechanical machines that are substantially similar in appearance or operation to VLTs or slot machines. The parties agree that these conditions are appropriate in order to maintain the "one-casino-per-tribe" policy described in Section C(2) of this Article.

5. The State acknowledges that after the opening of the Gaming Facility and the termination of the Kah-Nee-Ta Compact, pursuant to Section C(3) of this Article, the Tribe may seek to become an Oregon Lottery retailer on the Warm Springs Reservation. The parties agree that nothing in this Compact is intended to prevent the State and Tribe from negotiating to amend this Compact to authorize consideration of the Tribe's application to become an Oregon Lottery retailer to the extent authorized by state and federal law.

D. Number of Authorized VLTs.

1. Subject to, and in compliance with the provisions of this Compact, the Tribe is authorized to operate up to but not in excess of one thousand eight hundred VLTs at the Gaming Facility. Subject to other terms of this Compact, the Tribe may determine in its discretion the location and spacing of VLTs within the Gaming Facility.

2. The Tribe may at anytime after the first year following commencement of Class III Gaming at the Gaming Facility request written authorization from the State to operate up to an additional two hundred (200) VLTs, and the State shall, upon the Tribe's request, authorize in writing up to an additional two hundred (200) VLTs, for a total of two thousand (2000) VLTs, if the State determines that the Tribe is in substantial compliance with the provisions of this Compact.

3. The Tribe may maintain VLTs not in service in on-site storage at the Gaming Facility, so long as the total number of VLTs in operation and in storage does not exceed one hundred ten percent (110%) of the authorized number of

VLTs, and so long as the site and manner of storage are consistent with Tribal Gaming Commission policies mutually agreed to by the Tribal Gaming Commission and OSP.

4. For purposes of the calculation of the authorized number of VLTs as provided in this Section D, a VLT providing for play by multiple players shall count as one VLT, as long as the total number of such multiple-player VLTs does not exceed one percent (1%) of the total number of authorized VLTs. If the total number of VLTs providing for play by multiple players exceeds one percent (1%) of the total number of authorized Class III Gaming VLTs, then each gaming station at any multiple-player VLTs in excess of one percent (1%) of the total number of authorized VLTs shall be counted as one VLT.

E. Number of Authorized Table Games.

1. Subject to and in compliance with the provisions of this Compact, the Tribe is authorized to operate up to but not in excess of sixty (60) Table Games at the Gaming Facility.

2. The Tribe may at anytime after the first year following commencement of Class III Gaming at the Gaming Facility request written authorization from the State to operate up to an additional ten (10) Table Games, and the State shall, upon the Tribe's request, authorize in writing up to an additional ten (10) Table Games, for a total of seventy (70) Table Games, if the State determines that the Tribe is in substantial compliance with the provisions of this Compact.

F. Introduction of Authorized Games at Gaming Facility.

1. Except for Approved Class III Games listed in Exhibit K, and unless the parties agree to a shorter period, at least sixty (60) calendar days before any Authorized Class III Game is conducted at the Gaming Facility, the Tribal Gaming Commission shall:

a. Ensure that the Tribal Gaming Operation develops rules and procedures for a system of internal controls for the new Class III Gaming that meets the Minimum Internal Controls.

b. Require that the Tribal Gaming Operation provide appropriate training for all dealers, supervisors, surveillance personnel and any other employees involved in the conduct or regulation of the new Class III Gaming and for the Tribal Gaming Commission, such that those being trained have the knowledge and skills required under typical industry standards for the job function that employee performs, including but not limited to player money management and betting, card counting and detection of cheating methods. The Tribal Gaming Commission shall

notify OSP prior to beginning this training and shall provide OSP an opportunity to participate.

c. Ensure that the Tribal Gaming Operation establishes a security and surveillance plan for the new Class III Gaming that meets the Minimum Internal Controls.

d. Adopt rules of operation for the new Class III Gaming that meet the Minimum Internal Controls, including rules of play and standards for equipment.

e. Notify OSP that the Tribe proposes to offer the new Class III Games to the public and, at the same time, certify in writing that the requirements of Section F(1) have been met, and provide to OSP for review all of the internal controls, regulations, plans, procedures and rules required under this Article.

2. Pre-Introduction Demonstration.

a. Unless the parties agree to a shorter period, at least sixty (60) calendar days before any Authorized Class III Game is conducted at the Gaming Facility, the Tribe must demonstrate to OSP's reasonable satisfaction that the Tribe has adopted appropriate internal controls, surveillance plans, game rules and procedures, that meet gaming industry standards for the authorized Class III Game.

b. OSP shall notify the Tribe in writing within five (5) Business Days following the conclusion of the demonstration whether or not OSP is reasonably satisfied that the Tribe has complied with the foregoing obligation. If OSP believes that the Tribe has not adopted appropriate internal controls, surveillance plans, game rules and procedures, that meet gaming industry standards for the Authorized Class III Game, then OSP shall provide written notice to the Tribe detailing the perceived deficiencies, and OSP and the Tribe shall meet within 10 Business Days of the notice and mutually address OSP's concerns before an Authorized Class III Game is conducted at the Gaming Facility.

c. The parties agree that the rules of operation applicable to Previously Approved Games, including rules of play and standards for equipment, are deemed to meet OSP's reasonable satisfaction for purposes of the same Class III Games that the Tribe is authorized to conduct at the Gaming Facility.

d. Further, the Tribe and State must agree that the Tribal Gaming Commission and OSP are adequately prepared to regulate and monitor the new Class III Game, including agreement that the Tribal Gaming

Operation has sufficient adequately-trained personnel to supervise the conduct of the new Class III Game, and that the Tribal Gaming Commission has sufficient adequately-trained personnel to monitor and regulate conduct of the new Class III Game.

3. The Tribe shall establish wager limits for all Class III Gaming. The Tribe shall establish a maximum wager of five hundred dollars ($500) per hand, including side bets, for each Table Game and Counter Game for the initial ninety (90) day period that the particular type of Table Game or Counter Game is available for play.

4. After the initial ninety (90) day period described in Article V, Section F(3), the Tribe may make written request that OSP authorize a maximum wager of up to one thousand dollars ($1000) per hand, including side bets, for any particular type of Table Game or Counter Game. If OSP concludes that the Tribe is conducting the particular type of Table Game or Counter Game under the conditions described in subsections (a) through (e) of this Section F(4), then OSP shall authorize in writing the requested increase in wager limit for that particular type of Table Game or Counter Game. The Tribe may make written request to OSP for authorization to increase the wager limits during the initial ninety (90) day period, and OSP may in its discretion authorize or deny the requested increase. The following conditions apply to this Section (F)(4) for purposes of wager limit increase authorization:

a. All of the rules, procedures and plans required under Section F(1) of this Article must have been adopted and approved by the Tribal Gaming Commission;

b. All of the rules, procedures and plans required under Section F(1) of this Article must have been acknowledged by OSP as meeting the Minimum Internal Control Standards, and have been implemented by the Tribal Gaming Commission;

c. All training required by the Minimum Internal Controls and the regulations of the Tribal Gaming Commission must be up to date;

d. The Tribal Gaming Commission must have adopted policies and procedures that set forth appropriate sanctions for Violations by any employee of the Tribal Gaming Operation, and those procedures must provide for the Tribal Gaming Operation's investigation of possible Violations by any employee of the Tribal Gaming Operation, and the Tribal Gaming Operation management must have committed in writing to train employees regarding Violations and their consequences and impose the sanctions for Violations against any employee of the Tribal Gaming Operation as required by the Tribal Gaming Commission's policies and procedures;

e. The Tribal Gaming Commission must have adopted and implemented procedures for employees to directly report Violations to the Tribal Gaming Operation; and

f. The Tribal Gaming Commission must maintain records of investigations of all reports of Violations by any employee of the Tribal Gaming Operation and promptly report the Violations to OSP, including description of the action taken by the Tribal Gaming Commission or Tribal Gaming Operation management to correct the Violation, and the discipline or sanctions imposed.

ARTICLE VI – JURISDICTION

A. In General.

1. The State and the Tribe agree that the Cascade Locks Land is subject to Public Law 83-280 (18 USC § 1162, 28 USC § 1360) because it is Indian country in Oregon not part of the Warm Springs Reservation for purposes of that law. Accordingly, the State shall have criminal jurisdiction over offenses committed by or against Indians and non-Indians on the Cascade Locks Land; the criminal laws of the State shall have the same force and effect on the Cascade Locks Land as they have on non-Tribal lands within the State. Nothing in this Compact shall be interpreted to diminish the criminal jurisdiction of the United States.

2. The Tribe and the State shall have concurrent criminal jurisdiction over offenses committed by Indians on the Cascade Locks Land. Before any Class III Gaming is conducted at the Gaming Facility, the Tribe and OSP shall execute a memorandum of understanding regarding the enforcement of criminal laws on the Cascade Locks Land.

3. The Tribe and the State agree that the Tribe will contact local law enforcement officials for the first response to criminal or public safety issues that are not related to the operating of gaming or that occur other than in the course of the play of games. As between OSP and local law enforcement officials, the Tribe shall notify OSP regarding, and OSP shall have exclusive authority to investigate, violations of state criminal law related to the operations of gaming or that occur in the course of play of Class III Gaming. Nothing in this subsection 3 shall preclude the Tribe from requesting OSP assistance on any criminal or public safety issue if OSP is present at the Resort when assistance is needed.

4. If the Tribe establishes a law enforcement agency that is responsible to investigate criminal law violations at the Cascade Locks Land, the Tribe agrees that the State shall continue to have the authority to investigate possible violations of this Compact or other gaming regulatory matters, or both. The Tribe and the State further agree that their respective law enforcement agencies will cooperate

in any investigation that involves or potentially involves both criminal and regulatory violations.

5. The Tribe and the State agree to cooperate in the investigation and prosecution of any Gaming Related Criminal Activity committed at the Resort. The Tribe and the State agree to cooperate in maintaining a state-wide system to identify and monitor persons excluded from any tribal gaming facility in the State of Oregon.

6. In the event a court of competent jurisdiction determines that the Cascade Locks Land is not subject to Public Law 83-280, the parties shall renegotiate the memorandum of understanding described in Section A(2) of this Article as soon as practicable.

B. Except as may be provided in a memorandum of understanding executed in accordance with Section A(2) of this Article, law enforcement officers of the State of Oregon, or officers designated by the State, shall have free access to all areas within the Resort, for the purpose of maintaining public order and public safety, conducting investigations related to possible criminal activity and enforcing applicable laws of the State. The Tribe, or individuals acting on its behalf, shall provide OSP officers access to locked and secure areas of the Resort, including the Gaming Facility, in accordance with the regulations for operation and management of the Tribal Gaming Operation.

C. The Tribe and the State agree that the criminal laws of the State of Oregon that proscribe gambling activities shall apply to any person who engages in the proscribed activities if those activities are not conducted under the authority of the Tribe as provided in this Compact or otherwise under IGRA.

ARTICLE VII – LICENSING

A. Licensing of Gaming Employees.

1. All High Security Employees and Low Security Employees employed in the Gaming Facility shall be licensed by the Tribal Gaming Commission in accordance with the provisions of this Compact.

2. All prospective employees — whether High Security Employees or Low Security Employees — shall provide to the Tribal Gaming Commission any required application fees and full and complete information, on forms jointly developed and approved by the Tribal Gaming Commission and OSP, including but not limited to:

a. Full name, including any aliases by which the applicant has been known;

b. Social Security number;

c. Date and place of birth;

d. Residential addresses for the past five years;

e. Employment history for the past five years;

f. Driver's license number or state-issued or tribal-issued identification card;

g. All licenses issued and disciplinary actions taken by any State agency or local or federal agency or tribal gaming agency;

h. All criminal proceedings, except for minor traffic offenses, to which the applicant has been a party;

i. A current photograph; and

j. Any other information required by the Tribal Gaming Commission or OSP.

3. In addition to the requirements of Section A(2) of this Article, prospective Low Security Employees and High Security Employees shall provide two sets of fingerprints to the State.

4. Background Investigations and Reporting

a. Conduct of Investigations

i. Except as otherwise provided in subsections (ii), (iii) and (iv) of this Section (4)(a), the Tribal Gaming Commission shall conduct a Background Investigation on each prospective Low Security Employee and each prospective High Security Employee, consistent with the requirements of this Compact.

ii. In OSP's discretion, which shall not be unreasonably exercised, OSP may supplement any Tribal Gaming Commission Background Investigation or may conduct a separate Background Investigation.

iii. In the event that OSP is or becomes aware of information concerning the subject of a Background Investigation that suggests the necessity of further investigation, OSP shall immediately notify the Tribal Gaming Commission and provide the Tribal Gaming Commission with the opportunity to consider such information and take further action, unless OSP determines that to do so would hinder an ongoing investigation, or would be detrimental to the

fairness, integrity security or honesty of the Tribal Gaming Operation, or would be otherwise contrary to law.

iv. In the interest of the fairness, integrity, security and honesty of Class III Gaming and on the behalf of the Tribe, OSP shall conduct all Background Investigations on prospective Tribal Gaming Commission members, prospective Low Security Employees and prospective High Security Employees who are family members of the Tribal Gaming Commission, and on any other person the Tribal Gaming Commission identifies as having a potential conflict of interest with a member of the Tribal Gaming Commission. The Tribe shall forward the applicant information to OSP for each prospective Tribal Gaming Commission member, each prospective Low Security Employee and each prospective High Security Employee who is a family member of a Tribal Gaming Commission member. For purposes of this subsection (iv), "family members" include the current or former spouse of a Tribal Gaming Commission member; and the children, siblings and parents of a Tribal Gaming Commission member or of a spouse of the Tribal Gaming Commission member.

v. The Tribal Gaming Commission may request OSP to perform a Background Investigation on any prospective Low Security Employee or prospective High Security Employee and shall forward the application information to OSP for these prospective employees. Upon such request, OSP may conduct the background investigation.

b. Reporting

The party conducting the Background Investigation shall provide a written report to the other party within a reasonable period of time, but in no event later than sixty (60) calendar days following receipt of a completed application without notice to the other party. The party providing the written report shall include in the report the applicant information required under Section A(2) of this Article, the investigative report, criminal history report, credit report, one photograph, available relevant tribal court records, and any other information the reporting party deems relevant.

5. Denial of Tribal Gaming License

a. Except as provided in Section A(6) of this Article, the Tribal Gaming Commission shall deny a Tribal Gaming License to any High Security Employee or Primary Management Official who:

i. Has, within the ten-year period preceding the date of application for a license, been adjudicated a felon on charges other than a traffic offense, whether or not conviction of such a felony has been expunged, under the law of any federal, state or tribal jurisdiction, or is the subject of a civil judgment under the law of any federal, state or tribal jurisdiction that is based on a judicial finding of facts that constitute the elements of a felony other than a traffic offense, in that jurisdiction, or if OSP informs the Tribal Gaming Commission that it has determined, based on reasonably reliable information, that the applicant has engaged in conduct that constitutes the elements of such a felony, such that the conduct could be proved by a preponderance of the evidence.

ii. Has been convicted of a crime involving unlawful gambling under the law of any federal, state or tribal jurisdiction, whether or not conviction of such has been expunged, or is the subject of a civil judgment under the law of any federal, state or tribal jurisdiction that is based on a judicial finding of facts that constitute the elements of a crime involving unlawful gambling in that jurisdiction, or if OSP informs the Tribal Gaming Commission that it has determined, based on reasonably reliable information, that the applicant has engaged in conduct that constitutes the elements of a crime involving unlawful gambling, such that the conduct could be proved by a preponderance of the evidence.

iii. Has associated in a direct business relationship, whether as a partner, joint venturer or employer, with any person who has been convicted of a felony, other than a traffic offense, or a crime involving unlawful gambling, under the law of any federal, state or tribal jurisdiction, or if OSP informs the Tribal Gaming Commission that it has determined, based on reasonably reliable information, that the person has engaged in conduct that constitutes the elements of such a felony or a crime involving unlawful gambling, such that the conduct could be proved by a preponderance of the evidence.

iv. Was employed by any other person who has been convicted of a felony on charges other than a traffic offense, or a crime involving unlawful gambling, under the law of any federal, state or tribal jurisdiction, or if OSP informs the Tribal Gaming Commission that it has determined, based on reasonably reliable information, that the person has engaged in conduct that constitutes the elements of such a felony or crime involving unlawful gambling, such that the conduct could be proved by a preponderance of the evidence, if the prospective employee or

EXHIBIT 3

official was in any way involved in the criminal activity as it occurred.

v. Has been subject to convictions or judicial findings of offenses, other than a traffic offense, that demonstrate a pattern of disregard for the law, or if the Tribal Gaming Commission or OSP determines, based on reasonably reliable information, that the applicant has engaged in conduct that demonstrates a pattern of disregard for the law, such that the conduct could be proved by a preponderance of the evidence.

vi. For purposes of this Section A(5), "reasonably reliable information" means information that would be admissible in a civil court proceeding over an objection under the Federal or Oregon Rules of Evidence.

b. The Tribal Gaming Commission shall deny a Tribal Gaming License to any High Security Employee or Primary Management Official if:

i. The applicant fails to disclose any material fact to the Tribal Gaming Commission or OSP or its authorized agents during a Background Investigation; or

ii. The applicant misstates or falsifies a material fact to the Tribal Gaming Commission or OSP during a Background Investigation.

c. The Tribal Gaming Commission may deny a Tribal Gaming License to any prospective High Security Employee for any reason the Tribal Gaming Commission deems sufficient. Such decisions to grant or deny a Tribal Gaming License shall be consistent with the principles set forth in Article IV. In determining whether to deny a Tribal Gaming License to any prospective High Security Employee, the factors to be considered by the Tribal Gaming Commission shall include, but need not be limited to, the following:

i. Whether the applicant has been convicted of any crime (other than a crime listed in Article VII, Section A(5)(a)) in any jurisdiction; or

ii. Whether the applicant has associated with persons or businesses of known criminal background, or persons of disreputable character, that may adversely affect the general credibility, fairness, integrity, security, honesty or reputation of the Tribal Gaming Activities; or

iii. Whether there is any aspect of the applicant's past conduct that the Tribal Gaming Commission determines would adversely affect the fairness, integrity, security or honesty of Tribal Gaming Activities.

d. The Tribal Gaming Commission shall deny a Tribal Gaming License to any prospective Low Security Employee who is disqualified according to the criteria set forth in Sections A(5)(a)(i) or (ii) of this Article. The Tribal Gaming Commission may deny a Tribal Gaming License to any Low Security Employee applicant who is disqualified according to any of the criteria set forth in the remainder of this Section A(5). Decisions to grant or deny a Tribal Gaming License shall be consistent with the principles set forth in Article VI.

e. The Tribal Gaming Commission may reject an application if the applicant has not provided all of the information requested in the application.

f. Denial of a Tribal Gaming License by the Tribal Gaming Commission is final.

g. No High Security Employee may receive a Tribal Gaming License from the Tribal Gaming Commission until all Background Investigations required under this Article VII for that High Security Employee are completed, except as otherwise provided in Section A(8) of this Article.

6. Waiver of Disqualifying Criteria.

a. If a prospective High Security Employee or prospective Low Security Employee is disqualified for licensing under the provisions of Article VII, Section A(5), and the Tribal Gaming Commission believes that there are mitigating circumstances that justify waiver of the disqualifying factor, the Tribal Gaming Commission may give written notice to OSP asking to meet or confer concerning waiver of the disqualification. The Tribal Gaming Commission and the State shall meet or confer within fifteen (15) calendar days after the State receives written notice.

b. In order for the Tribal Gaming Commission to waive disqualification of licensing of any prospective High Security Employee or prospective Low Security Employee, OSP must agree to the waiver. In the event that the OSP does not agree to the waiver, the OSP shall provide the Tribal Gaming Commission with a detailed explanation of the reasons for the disagreement. OSP will not withhold agreement arbitrarily.

c. Waiver of disqualification for licensing may be based on one or more of the following circumstances:

i. Passage of time since conviction of a crime;

ii. The applicant's age at the time of conviction;

iii. The severity of the offense committed;

iv. The overall criminal record of the applicant;

v. The applicant's present reputation and standing in the community;

vi. The nature of the position for which the application is made;

vii. The nature of a misstatement or omission made in the application;

viii. In the event that the applicant was convicted of a crime that was due in part to alcohol or drug dependency, the applicant's participation in any treatment program for this dependency and the applicant's progress in recovery from this dependency.

ix. The Tribe's goal of providing employment for tribal members and their spouses is advanced because the applicant is an enrolled member of the Tribe, is married to an enrolled member of the Tribe, or is an enrolled member of another Indian tribe; or

x. The Tribal Gaming Commission's personal knowledge of the applicant's character.

d. OSP may agree to a waiver subject to conditions imposed by the Tribal Gaming Commission, such as a probationary period, restrictions on duties, or specific kinds of supervision.

7. Background Investigation During Employment.

a. The Tribal Gaming Commission may conduct additional Background Investigations of any High Security Employee or Low Security Employee at any time during the term of employment to determine continued eligibility for a Tribal Gaming License. If, after investigation, the Tribal Gaming Commission determines there is cause for revocation of the Tribal Gaming License of any High Security Employee or Low Security Employee under the criteria established in

Section A(5) of this Article, the Tribal Gaming Commission shall revoke the Tribal Gaming License and shall provide a report of the investigation and revocation to OSP.

b. OSP may conduct additional Background Investigations of any High Security Employee or Low Security Employee at any time during the term of employment for purposes of monitoring as described in Article X, Section (B)(1). OSP will notify the Tribal Gaming Commission of the investigation and the reason for it, unless OSP determines that to do so would hinder an ongoing investigation, or would be detrimental to the fairness, integrity security or honesty of the Tribal Gaming Operation, or would be otherwise contrary to law. If, after investigation, OSP determines there is cause for the revocation of the Tribal Gaming License of any employee under the criteria established in Section A(5) of this Article, it shall promptly so report to the Tribal Gaming Commission and furnish the Tribal Gaming Commission with copies of all relevant information pertaining to such determination. The Tribal Gaming Commission shall review OSP's report and supporting materials, and if the report establishes the existence of any criterion for revocation that is set forth in Section A(5) of this Article, the Tribal Gaming License shall be revoked.

8. Provisional Tribal Gaming Licenses

a. Except as provided in Section A(8)(b) of this Article, the Tribal Gaming Commission may issue a Provisional Tribal Gaming License to High Security Employees and Low Security Employees upon completion of a review of the employment application, applicant's computerized criminal history check and applicant's credit check by the Tribal Gaming Commission if the applicant is not disqualified on the basis of the results of these reviews and checks.

b. If the Tribal Gaming Commission requests OSP to conduct an applicant's Background Investigation or OSP conducts an applicant's Background Investigation pursuant to Section A(4)(a)(iv) of this Article, and the Tribal Gaming Commission includes notice to OSP of the Commission's intent to issue a Provisional Tribal Gaming License with the applicant information it provides to OSP under Section A(4) of this Article, then OSP shall notify the Tribal Gaming Commission as soon as reasonably practicable, but in no event later than ten (10) Business Days after OSP receives the notice and required applicant information, whether the applicant is eligible for a Provisional Tribal Gaming License. If OSP does not notify the Tribal Gaming Commission whether the applicant is eligible for a Provisional Tribal Gaming License within this ten (10) Business Day period, the applicant is deemed eligible.

c. The Tribal Gaming Commission agrees to submit Primary Management Officials' fingerprint cards to OSP at least ten (10) Business Days prior to issuing a Provisional Tribal Gaming License to a Primary Management Official.

d. The Tribal Gaming Commission shall immediately revoke any Provisional Tribal Gaming License and shall require the Tribal Gaming Operation to terminate employment immediately if it is determined during the Background Investigation that the person does not qualify for a Tribal Gaming License. Otherwise, an employee's Provisional Tribal Gaming License shall expire on the date it is determined that the employee is eligible for a Tribal Gaming License, and a Tribal Gaming License is issued to that employee. No Provisional Tribal Gaming License shall exceed ninety (90) calendar days duration following the date the Provisional Tribal Gaming License is issued unless OSP agrees to the extension of the Provisional Tribal Gaming License.

9. Duration of Tribal Gaming License and Renewal. Any Tribal Gaming License shall be effective for not more than three (3) years from the date of issue except that a licensed employee who has applied for Tribal Gaming License renewal may continue to be employed under the expired Tribal Gaming License until final action is taken on the renewal application in accordance with the Sections A(2) through A(5) of this Article. Applicants for Tribal Gaming License renewal shall provide updated information to the Tribal Gaming Commission on a form jointly developed and approved by the Tribal Gaming Commission and OSP. The applicant will not be required to resubmit historical data already provided. The Tribal Gaming Commission may perform a new Background Investigation for any employee whose Tribal Gaming License is requested to be or has been renewed.

10. Revocation of Tribal Gaming License. The Tribal Gaming Commission may revoke the Tribal Gaming License of any employee pursuant to policies determined by the Tribal Gaming Commission. Upon determination that an employee is disqualified according to the criteria described in Section A(5) of this Article , the Tribal Gaming Commission shall:

a. Immediately revoke the employee's Tribal Gaming License and require the Tribal Gaming Operation to immediately terminate employment; or

b. Waive revocation if OSP and the Tribal Gaming Commission immediately agree that a waiver pursuant to Section A(6) of this Article is appropriate; or

c. Suspend the employee's Tribal Gaming License and require the Tribal Gaming Operation to immediately suspend employment pending a

determination as to whether OSP and the Tribal Gaming Commission agree to a waiver pursuant to Section A(6) of this Article.

11. The Tribal Gaming Operation shall maintain a procedural manual or manuals that includes rules and regulations relating to gaming activities and provides that breach of these procedures, rules or regulations by an employee may result in sanctions.

12. The Tribal Gaming Commission agrees to provide to OSP, on a monthly basis, a list of all current employees of the Tribal Gaming Operation which indicates the position held and whether each employee listed is licensed as a High Security Employee or Low Security Employee, if applicable. This list shall include information about termination of any employee, and any suspension, revocation or renewal of an employee's Tribal Gaming License.

ARTICLE VIII – CLASS III GAMING CONTRACTS

A. Major Procurements.

1. The Tribe agrees to not consummate any Class III Gaming Contract for a Major Procurement unless it is in writing. Subject to the provisions of Section A(3) of this Article, the Tribe also agrees to not consummate any contract for a Major Procurement until the Tribal Gaming Commission has submitted to OSP a letter of intent to do business with the proposed Class III Gaming Contractor, a Background Investigation on the proposed Class III Gaming Contractor has been completed by OSP, and OSP has notified the Tribal Gaming Commission in writing that it has determined that the proposed Class III Gaming Contractor is not disqualified under any of the criteria in Section F of this Article. All Class III Gaming Contracts consummated by the Tribe shall include a provision that gives the State authority to suspend or prohibit the shipment of any and all Class III Gaming supplies or devices pursuant to the provisions of Article X, Section C(5) and Article XVII, Section C(3).

2. Except as provided in Section A(3), of this Article OSP shall conduct a Background Investigation on all proposed Class III Gaming Contractors for Major Procurements and shall provide a written report regarding the results of the investigation to the Tribal Gaming Commission within a reasonable period of time. The time for completion and notification of results of such Background Investigations shall not exceed sixty (60) calendar days after OSP receives from the proposed Class III Gaming Contractor both OSP's fee for the Background Investigation under Section K of this Article, and full disclosure of all information requested by the Tribal Gaming Commission and OSP under this Article. This sixty (60) day period may be extended by written notice to and consent of the Tribe, which consent shall not be unreasonably withheld. If the Tribal Gaming Commission requests, OSP agrees to make best efforts to complete a Background Investigation within less than sixty (60) calendar days.

3. If the Tribal Gaming Commission and OSP agree in writing that business necessity or the protection of the fairness, integrity, security or honesty of the Tribal Gaming Activities require a quicker response than provided for in Section A(2) of this Article , OSP shall perform an abbreviated review within 30 calendar days of a request by the Tribe to enable the Tribe to execute a temporary Class III Gaming Contract for a Major Procurement while a complete Background Investigation is being performed. OSP's agreement shall not be unreasonably withheld. If the Class III Gaming Contractor is disqualified according to the criteria described in Section F of this Article, the temporary Class III Gaming Contract shall be terminated upon OSP's notice to the Tribal Gaming Commission, and the Tribe agrees to discontinue doing business with the Class III Gaming Contractor immediately thereafter until the contractor no longer meets the criteria for disqualification under Section F of this Article.

B. Sensitive Procurements.

1. Before consummation of a Class III Gaming Contract for a Sensitive Procurement, the Tribal Gaming Commission shall submit a letter of intent to do business with the proposed Class III Gaming Contractor for a Sensitive Procurement, or a confirming memorandum from the Tribal Gaming Commission representing that an oral Class III Gaming Contract is proposed, to OSP. Each letter of intent and confirming memorandum shall specifically identify the proposed Class III Gaming Contractor and shall contain a description of the nature of goods or services to be obtained under the proposed Class III Gaming Contract.

2. After a proposed Class III Gaming Contractor for a Sensitive Procurement has made full disclosure of all information requested by the Tribal Gaming Commission and OSP under this Article, and OSP has received its fee pursuant to Section K of this Article for any necessary Background Investigation, the Tribe may consummate a contract for a Sensitive Procurement before OSP has completed a Background Investigation on the proposed Class III Gaming Contractor.

3. OSP may conduct a Background Investigation on a proposed Class III Gaming Contractor for a Sensitive Procurement if OSP considers it necessary and the proposed Class III Gaming Contractor is not already an approved Class III Gaming Contractor in Oregon, and if a Background Investigation is performed, shall provide a written report to the Tribal Gaming Commission regarding the results of such investigation. The time for completion and notification of results of such Background Investigations shall not exceed sixty (60) calendar days after OSP receives from the proposed Class III Gaming Contractor both OSP's fee pursuant to Section K of this Article for the Background Investigation, and full disclosure of all information requested by the Tribal Gaming Commission and OSP under this Article. This sixty (60) day period may be extended by written notice to and consent of the Tribe, which consent shall not be unreasonably

withheld. If the Tribal Gaming Commission requests, OSP agrees to make best efforts to complete a Background Investigation within less than sixty (60) calendar days. If the Class III Gaming Contractor is disqualified according to the criteria described in, Section F of this Article, the Class III Gaming Contract shall be terminated, and the Tribe agrees to discontinue doing business with the Class III Gaming Contractor immediately and thereafter until the contractor no longer meets the criteria for disqualification under Section F of this Article.

4. If the Tribe reasonably believed at the time a Class III Gaming Contract was made that the procurement action was a Sensitive Procurement, and if thereafter the Tribe determines that the procurement is a Major Procurement, then the Tribe shall immediately notify OSP of the nature, scope and anticipated duration of the procurement action. If OSP did not initially conduct a Background Investigation on the Class III Gaming Contractor for the Sensitive Procurement, OSP may proceed with a Background Investigation in accordance with Section B(3) of this Article, and if the Class III Gaming Contractor is disqualified according to the criteria described in Section F of this Article, OSP shall notify the Tribal Gaming Commission, the Class III Gaming Contract shall be terminated, and the Tribe agrees to discontinue doing business with the Class III Gaming Contractor immediately and thereafter until the Class III Gaming Contractor no longer meets the criteria for disqualification under Section F of this Article.

C. Whether entering into a written contract for a Major Procurement or obtaining any Sensitive Procurement items from a supplier, the Tribe and the supplier must acknowledge in the contract for the Major Procurement and in writing with the supplier for the Sensitive Procurement, the authority of the State to suspend or prohibit the shipment of Class III Gaming supplies or equipment pursuant to the provisions of Article XVII, Section C(3) and Article X, Section C(5).

D. Approved Contractors. OSP shall maintain a list of Class III Gaming Contractors approved by OSP or by the Oregon Lottery Commission (or their successors) to do business in Oregon with any gaming entity and shall provide a copy of the list to the Tribal Gaming Commission on a monthly basis. Notwithstanding any other provisions of this Compact, if a Class III Gaming Contractor has been included on the list, the Tribe may consummate a Class III Gaming Contract with a Class III Gaming Contractor for either a Major or Sensitive Procurement only after the Tribal Gaming Commission has submitted to OSP a letter of intent to do business with the proposed Class III Gaming Contractor or a confirming memorandum representing that an oral Class III Gaming Contract for a Sensitive Procurement is proposed. Each letter of intent and confirming memorandum shall specifically identify the proposed Class III Gaming Contractor and shall contain a description of the nature of goods or services to be obtained under the proposed Class III Gaming Contract. The Tribe shall include a provision in each Class III Gaming Contract that provides Contractor will be removed from the list of approved Class III Gaming Contractors if Contractor's actions cause Contractor to be disqualified

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from doing business with the Tribe or otherwise cause the Tribe to be out of compliance with this Compact.

E. The Tribe shall not consummate any Class III Gaming Contract with a Class III Gaming Contractor that does not grant both OSP and the Tribal Gaming Commission access, upon request, to the business and financial records of the Class III Gaming Contractor and of any Owner or Key Employee of the Class III Gaming Contractor.

F. Criteria for Contract Denial or Termination.

1. The Tribe shall not consummate any Class III Gaming Contract for a Major Procurement, and the Tribe shall terminate a Class III Gaming Contract for any Major Procurement or Sensitive Procurement immediately, if the following conditions are either disclosed in the application materials or reported by OSP relative to a particular Class III Gaming Contractor:

a. A conviction of the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor for any felony other than a traffic offense, in any jurisdiction, within the ten-year period preceding the date of the proposed Class III Gaming Contract;

b. A conviction of the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor for any gambling offense in any jurisdiction; However, if the conviction was more than twenty years preceding the date of the proposed Class III Gaming contract, the Tribal Gaming Commission may in its discretion determine whether to deny the license on the basis of the conviction;

c. A civil judgment against the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor, based in whole or in part upon conduct that would constitute a gambling offense. However, if the judgment was more than twenty years preceding the date of the proposed Class III Gaming contract, the Tribal Gaming Commission may in its discretion determine whether to deny the license on the basis of the judgment.

d. A civil judgment entered within the ten year period preceding the date of the proposed Class III Gaming Contract against the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor, based in whole or in part upon conduct that would constitute a felony, other than a traffic offense;

e. A failure by the Class III Gaming Contractor to disclose any material fact to OSP or the Tribal Gaming Commission or their authorized agents during initial or subsequent Background Investigations, unless OSP determines that the failure to disclose was not intentional;

f. A misstatement or untrue statement of material fact made by the Class III Gaming Contractor to OSP or the Tribal Gaming Commission or their authorized agents during initial or subsequent Background Investigations as determined by the Tribal Gaming Commission or OSP, unless OSP determines that the misstatement or untrue statement of material fact was not intentional;

g. An association of the Class III Gaming Contractor with persons or businesses of known criminal background, or persons of disreputable character, that may adversely affect the general credibility, fairness, integrity, security, or honesty of the Tribal Gaming Activities;

h. Any aspect of the Class III Gaming Contractor's past conduct that the Tribal Gaming Commission or OSP reasonably determines would adversely affect the fairness, integrity, security, or honesty of the Tribal Gaming Activities;

i. The Class III Gaming Contractor has engaged in a business transaction with a Tribe that involved providing gaming devices for Class III Gaming conducted by a Tribe without a tribal-state Class III Gaming compact in violation of IGRA; or

j. A prospective Class III Gaming Contractor fails to provide any information requested by the Tribal Gaming Commission or OSP under this Article for the purpose of making any determination required by this Article.

2. The Tribal Gaming Commission may choose to not approve any Class III Gaming Contract for any reason the Commission deems sufficient.

3. No Class III Gaming Contractor shall own, manufacture, possess, operate, own an interest in, or gain income or reimbursement in any manner from gaming activities or gaming devices in any jurisdiction unless the activities or devices are approved and certified by another state lottery, gambling or gaming control agency, Indian Tribe with an approved tribal-state compact pursuant to IGRA, the National Indian Gaming Commission, or foreign country that has jurisdiction to approve that activity, and such ownership, manufacture, possession, operation, or income is disclosed to and approved by the Tribal Gaming Commission and OSP.

4. If a prospective Class III Gaming Contract could not otherwise be consummated because of the requirements of Article VIII regarding a Key Employee of the Class III Gaming Contractor, the Tribe may enter into a Class III Gaming Contract only if OSP and the Tribal Gaming Commission agree that the relationship between the Class III Gaming Contractor and the convicted or liable person or employee has been severed. For purposes of this Section F(4), a

relationship is severed if the convicted or liable person or employee has no continuing connection with the direction or control of any aspect of the business of the Class III Gaming Contractor, and the convicted or liable person or employee is no longer employed by the Class III Gaming Contractor in any capacity. The Class III Gaming Contractor shall bear the burden of showing to the satisfaction of the Tribal Gaming Commission and OSP that a relationship has been severed.

G. Rescission or Termination of Class III Gaming Contracts.

1. The Tribal Gaming Commission may require the Tribe to rescind or terminate any Class III Gaming Contract pursuant to policies and procedures determined by the Tribal Gaming Commission consistent with the Tribal Gaming Ordinance.

2. The Tribal Gaming Commission shall require the Tribe to terminate any Class III Gaming Contract if, at any time, the Tribal Gaming Commission or OSP determine that the Class III Gaming Contractor meets any of the criteria for disqualification under Section F of this Article. Class III Gaming Contracts shall provide that Class III Gaming Contractors consent to rescission or termination of any Class III Gaming Contract for cause consistent with the criteria established by Section F of this Article by virtue of entering into a Class III Gaming Contract.

H. Contractor Reporting Requirements.

1. The Tribe shall require all Class III Gaming Contractors to submit to the Tribal Gaming Commission and OSP any financial and operating data requested by the Tribal Gaming Commission or OSP. The Tribal Gaming Commission shall specify the frequency and format for the submission of such data.

2. The Tribal Gaming Commission, OSP, or their agents reserve the right to examine Class III Gaming Contractor tax reports and filings and all records from which such tax reports and fillings are compiled.

3. All Class III Gaming Contracts shall contain a provision requiring the Class III Gaming Contractor to notify both the Tribal Gaming Commission and OSP of the transfer of a Controlling Interest in the ownership of the Class III Gaming Contractor.

I. Termination of Contract.

1. No Class III Gaming Contract shall have a term longer than seven (7) years, other than contracts for traditional financing of capital.

2. A Class III Gaming Contract shall be terminated immediately upon the occurrence of any of the following:

a. The Class III Gaming Contractor is discovered to have made any material statement, representation, warranty, or certification in connection with the Class III Gaming Contract that is false, deceptive, incorrect, or incomplete;

b. The Class III Gaming Contractor, or any Owner or Key Employee of the Class III Gaming Contractor is convicted of a felony or a gambling-related offense that reflects on the Class III Gaming Contractor's ability to perform honestly in carrying out the Class III Gaming Contract unless OSP and the Tribal Gaming Commission agree that the relationship between the Class III Gaming Contractor and the convicted or liable person has been severed as provided in Section F of this Article; or

c. The Class III Gaming Contractor jeopardizes the fairness, integrity, security or honesty of the Tribal Gaming Activities.

J. The Tribe shall include a provision in each Class III Gaming Contract providing that OSP may at its sole election conduct an annual update Background Investigation of each Class III Gaming Contractor and that the Class III Gaming Contractor shall pay OSP for OSP's reasonable and necessary costs associated with conducting that Background Investigation, as determined by OSP.

K. Cost of Background Investigations for Class III Gaming Contractors .

1. OSP shall be reimbursed its reasonable and necessary costs associated with conducting Background Investigations as determined by OSP, including the costs associated with conducting update Background Investigations.

2. OSP shall assess the cost of Background Investigations for Class III Gaming Contract applications to the applicants, including the costs associated with conducting update Background Investigations. . The applicant is required to pay the assessed Background Investigation cost in full prior to commencement of the Background Investigation, or as otherwise assessed by OSP. If the applicant refuses to prepay the cost of a Background Investigation, the State shall notify the Tribal Gaming Commission, and the Tribal Gaming Commission may choose to pay the Background Investigation cost or withdraw its request for the Background Investigation. In addition, if a Class III Gaming Contractor on the list of approved contractors described in Article VIII D refuses to pay costs assessed associated with conducting update Background Investigations, OSP may remove that contractor from the list of approved contractors.

L. Access to Contracts.

1. If the Primary Management Official is a corporation or other form of organization, the Primary Management Official shall provide OSP at all times

with a current copy of all Class III Gaming Contracts between the Primary Management Official and the Tribe.

2. If the Primary Management Official is a corporation or other form of organization, the Primary Management Official shall provide to the State complete information pertaining to any transfer of Controlling Interest in the management company at least thirty (30) calendar days before such change; or, if the Primary Management Official is not a party to the transaction effecting such change of ownership or interests, immediately upon acquiring knowledge of such change or any contemplated change.

3. In order to assure the fairness, integrity, security and honesty of the Tribal Gaming Activities, the Tribal Gaming Commission agrees to make available for inspection to OSP, upon request, a list of all non-gaming contractors, suppliers and vendors doing business with the Tribal Gaming Operation. The Tribal Gaming Commission also agrees to give OSP access to copies of all non-Class III Gaming contracts upon OSP's written request. OSP shall include in its written request an explanation of the grounds for the request, including any concerns about a particular non-Class III Gaming contractor and an explanation of how, in OSP's judgment, its review of the non-Class III Gaming contracts would further the fairness, integrity, security or honesty of the Tribal Gaming Activities. Notwithstanding the foregoing, OSP is not required to include any explanation in its written request for access to copies of non-Class III Gaming contracts if OSP is prohibited by law from such disclosure or OSP determines that an explanation would be detrimental to the fairness, integrity, security or honesty of the Tribal Gaming Activities.

ARTICLE IX – ADDITIONAL REGULATIONS REGARDING CLASS III GAMING

A. Gaming Regulations. Conduct of all Class III Gaming authorized under this Compact shall be in accordance with the requirements of applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Activities. The Tribe and the State agree that the Minimum Internal Controls may be modified or supplemented in writing by mutual agreement of the Tribal Gaming Commission and OSP. The Tribe and the State understand that such modifications or supplements do not require formal amendment of this Compact.

B. Identification badges. The Tribal Gaming Commission shall require all employees of the Tribal Gaming Operation employed at the Gaming Facility to wear, in plain view, identification badges issued by the Tribal Gaming Commission that include photo and name. Employees assigned to covert compliance duties shall only be required to have on their person an identification badge. OSP employees shall not be required to wear identification badges.

C. Credit.

1. Except as otherwise provided in Section C(2) of this Article all Class III Gaming shall be conducted on a cash basis. Except as provided herein, no person shall be extended credit for Class III Gaming nor shall the Tribe permit any person or organization to offer such credit for a fee. Cashing checks for purposes of Class III Gaming constitutes extending credit under this subsection, except when a check is used to facilitate electronic transfer of funds when availability of funds is verified, or when a check has been issued by a Warm Springs tribal entity employer.

2. At anytime at least one year after the commencement of Class III Gaming at the Gaming Facility, or earlier upon the mutual agreement of the parties, the Tribe may request that the State negotiate a memorandum of understanding with the Tribe regarding the terms and conditions under which the Tribal Gaming Operation may extend credit to certain patrons of the Gaming Facility. The State agrees to negotiate in good faith regarding such a memorandum of understanding. The memorandum of understanding must address the amounts of credit that may be extended, the qualifications for credit, procedures and policies for the extension of credit that are consistent with gaming industry standards, safeguards to ensure that any social or public safety problems that may result from gaming are not increased by the extension of credit, and any other topics that either party reasonably believes are necessary.

D. Prohibition on attendance and play of minors. No person under the age of twenty-one (21) shall participate in, or be employed in any position directly related to, any Class III Gaming authorized by this Compact. If any person under the age of twenty-one (21) plays and otherwise qualifies to win any Class III Gaming prize or compensation, the prize or compensation shall not be paid. Employees under age twenty-one (21) whose non-gaming duties require their presence in the Gaming Area may be present in the Gaming Area, but only to the extent required by the employee's non-gaming duties.

E. Prohibition of firearms. With the exception of federal, state, local and tribal law enforcement agents or officers on official business, the Tribe will prohibit any person from possessing firearms within the Gaming Complex.

F. Service of Alcohol. Alcohol may be served in the Gaming Complex, including in the Gaming Area, only if authorized by the Tribe and permitted by federal law. Nothing in this Section F shall permit the State to impose taxes on the sale of alcoholic beverages by the Tribe on the Cascade Locks Land. If alcohol is served in the Gaming Complex, no alcoholic beverages may be served free or at a reduced price to any patron of the Gaming Complex. Before alcohol may be served in the Gaming Complex, the Tribe and the State must enter into a memorandum of understanding that establishes which State laws and Oregon Liquor Control Commission licensing regulations will apply to the sale or service of alcoholic beverages at the Gaming Complex.

G. Liability for damage to persons and property. During the term of this Compact, the Tribe shall obtain and maintain commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States, underwritten by an insurer or insurers with a rating of "A" or above by A. M. Best, with limits of not less than $500,000 for one person and $3,000,000 for any one occurrence for any bodily injury, personal injury, or property damage. The Tribe's insurance policy shall have an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy in state, federal or tribal court, including when the Tribe or an entity of the Tribe is the named defendant. The policy shall provide that the State, OSP, their divisions, officers and employees are additional insureds, but only with respect to the Tribe's activities under this Compact, provided that the Tribe shall not be liable for any claim or cause of action for injury or damages caused by the errors or omissions of the State, OSP, or their divisions, officers and employees.

H. INDEMNIFICATION. THE TRIBE SHALL INDEMNIFY AND HOLD HARMLESS THE STATE, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY CLAIMS, DAMAGES, LOSSES OR EXPENSES ARISING OUT OF OR RELATING TO THE ACTIVITIES OF THE TRIBE UNDER THIS COMPACT, WITHIN THE COVERAGE OF THE INSURANCE DESCRIBED IN SECTION G OF THIS ARTICLE, UP TO THE POLICY LIMITS OF SUCH INSURANCE WHETHER OR NOT TRIBE HAS COMPLIED WITH THE REQUIREMENTS OF SECTION G, EXCEPT AS MAY BE THE RESULT OF THE NEGLIGENCE OF THE STATE, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, OR ANY OF THEM.

ARTICLE X – ENFORCEMENT OF GAMING REGULATIONS

A. Tribal Gaming Commission.

1. The Tribe agrees to maintain a Tribal Gaming Commission that has the exclusive authority to regulate gaming activities on the Cascade Locks Land, that has sufficient numbers of adequately-trained personnel to monitor and regulate the conduct of Class III Gaming, and that has the resources to perform its duties under Tribal law and this Compact. The Commission or individuals designated to perform Commission duties shall not participate in any way in the management of the Gaming Facility. Commission members may be removed only for cause by the Tribal Council. Commission members must satisfy the Background Investigation requirements that are applicable to High Security Employees and Primary Management Officials outlined in Article VII, Sections A(5)(a)(i) through (vi) and Sections A(5)(b)(i) and (ii).

2. The Tribal Gaming Commission shall have primary responsibility for the on-site regulation, control and security of the Tribal Gaming Operation authorized by this Compact, and for the enforcement of this Compact on behalf of the Tribe. The Tribal Gaming Commission's role shall include the promulgation and enforcement of rules and regulations that:

a. Ensure compliance with all applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming;

b. Ensure the physical safety of patrons in, and of personnel employed by, the establishment;

c. Safeguard the assets transported to and from, and within, the Gaming Facility;

d. Protect Gaming Facility patrons and property from illegal activity;

e. Provide that, whenever Gaming Related Criminal Activity is observed or suspected, best efforts will be made to gather as much identifying information regarding the suspect as possible, such as drivers' license number, photograph, description of the suspect's vehicle and vehicle license information and to then immediately notify OSP and other appropriate law enforcement agencies;

f. Provide for the notification of OSP within seventy-two (72) hours of all other suspected crimes occurring anywhere at the Gaming Facility.

g. Require, regardless of any other logs or records that may be maintained, the Tribal Gaming Commission to record any and all Violations within the Gaming Facility on computer printouts or in indelible ink in a bound notebook from which pages cannot be removed, and each side of each page of which is sequentially numbered, with the following information:

i. The assigned sequential number of the incident;

ii. The date;

iii. The time;

iv. The nature of the incident;

v. The person involved in the incident;

vi. The employee assigned to conduct the investigation, if any; and

vii. The outcome and action taken, if any.

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h. Require maintenance of logs relating to surveillance, security, cashier's cage, credit, VLTs (showing when machines are opened), and VLT location;

i. Establish and maintain an updated list of persons barred or excluded for any length of time over forty-eight (48) hours from the Gaming Facility for any reason (other than the person's status as a former employee), including but not limited to the person's criminal history or the person's association with career offenders or career offender organizations, and furnish that list to OSP;

j. Require an annual audit of the Tribal Gaming Operation by a certified public accountant;

k. Ensure that a closed circuit television system is maintained in the cash room of the Gaming Facility and that copies of the floor plan and TV system are available for inspection by OSP;

l. Ensure that a cashier's cage is maintained in accordance with industry standards for security;

m. Ensure that pari-mutuel clerks are sufficiently trained;

n. Ensure that sufficient security personnel are employed and trained;

o. Subject to agreement with the State, establish a method for resolving disputes with players and providing notice to players of such a method;

p. Ensure that surveillance equipment and personnel are managed and controlled independently of management of the Tribal Gaming Operation; and

q. Ensure that all contractors supplying VLTs to the Gaming Facility obtain proper shipping authorization from OSP prior to the VLTs being transported.

3. Tribal Gaming Inspections.

a. The Tribal Gaming Commission or its agents shall be on duty within the Gaming Facility during all hours of operation. The Commission and its agents shall have immediate access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions

(including the Minimum Internal Controls), the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming. Personnel designated as surveillance operators shall not fulfill this function on behalf of the Tribal Gaming Commission. Any Violation by the Tribal Gaming Operation, a gaming employee, or any person on the premises whether or not associated with the Tribal Gaming Operation, shall be reported immediately to the Tribal Gaming Commission, and the Tribal Gaming Commission shall report such Violations to OSP within seventy-two (72) hours of the earlier of the time the Violation was reported to the Tribal Gaming Commission or to the management of the Tribal Gaming Operation.

b. The Tribal Gaming Commission may designate any individual or individuals to perform the inspection duties outlined in this Article X, Section A(3), so long as those individuals perform those duties independently of the management of the Tribal Gaming Operation, and are supervised and evaluated by the Tribal Gaming Commission as to the performance of those duties.

c. Inspections by the Tribal Gaming Commission under this Section A(3) shall include monitoring compliance with all applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, Compact provisions (including the Minimum Internal Controls), the Tribal Gaming Ordinance, Tribal Internal Controls, and policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming. These inspection duties of the Tribal Gaming Commission include but are not limited to:

i. Observation of the following (at least monthly or more frequently as determined by the Tribal Gaming Commission):

(a) Sensitive gaming inventories;

(b) VLT or table game drop;

(c) Soft count;

(d) Security and surveillance logs;

(e) Movement of cash within, into and out of the Gaming Facility;

(f) Surveillance procedures;

(g) Security procedures;

(h) Games controls; and

(i) Integrity of VLT microprocessor or E-PROM, CD ROM, hard disk or other electronic decision-making technologies.

ii. Appropriate investigation of any potential Violations.

iii. Investigation of any cash variance of $500 or greater in a specific variance report or that the Tribal Gaming Commission determines is a threat to the fairness, integrity, security or honesty of the Tribal Gaming Operation, followed by a report of the findings to the Tribal Gaming Commission and OSP.

iv. At the player's request, review and investigate all player gaming disputes not resolved by the Tribal Gaming Operation.

v. At the player's request, review and investigate all player gaming disputes $500 or greater.

vi. Reporting to OSP any criminal or regulatory issues that may affect the fairness, integrity, security or honesty of the Tribal Gaming Activities.

4. Investigations and Sanctions. The Tribal Gaming Commission shall conduct an appropriate investigation of any reported Violation and shall require the Tribal Gaming Operation to correct the Violation upon such terms and conditions as the Tribal Gaming Commission determines to be necessary. The Tribal Gaming Commission shall be empowered by the Tribal Gaming Ordinance to impose fines and other sanctions within the jurisdiction of the Tribe against the Tribal Gaming Operation, a gaming employee, or any other person directly or indirectly involved in, or benefiting from, the Tribal Gaming Operation.

5. Reporting to OSP. The Tribal Gaming Commission shall forward copies of all completed investigation reports as described in Section A(3) of this Article and final dispositions to the State on a continuing basis. If requested by the Tribal Gaming Commission, the State shall assist in any investigation initiated by the Tribal Gaming Commission, and provide other requested services to assist in enforcement of the provisions of this Compact, tribal ordinances, regulations or applicable laws of the State. In cases where an investigation lasts longer than forty-five (45) calendar days, the Tribal Gaming Commission shall notify OSP at the expiration of the forty-five (45) calendar days and every thirty (30) calendar days thereafter in writing as to the status of the investigation, why the matter is taking longer than forty-five (45) calendar days, and the anticipated completion date of the investigation.

B. State Enforcement of Compact Provisions.

1. Monitoring. OSP is authorized to monitor the Tribal Gaming Activities in the manner the State reasonably considers necessary to verify that the Tribal Gaming Operation is conducted in compliance with the provisions of this Compact and to verify that the Tribal Gaming Commission is fulfilling the Tribe's obligations under this Compact. OSP shall have free and unrestricted access to all areas of the Resort during normal operating hours without giving prior notice to the Tribal Gaming Commission except for those areas that are mutually agreed to by OSP and the Tribal Gaming Commission as being excluded. At the Tribe's option, it may designate a Tribal Gaming Agent or other Tribal law enforcement official to accompany the OSP official monitoring the Tribal Gaming Activities. Such designation by the Tribe shall not delay, inhibit, or deprive OSP of such access. The Tribe agrees that OSP's monitoring function includes, at a minimum, the activities identified in this Compact and any amendments and memoranda of understanding entered into pursuant to this Compact, and that the actual, reasonable and necessary cost of monitoring activities shall be assessed to the Tribe as provided in Section C of this Article. In addition to OSP's regular monitoring functions, the Tribe agrees that OSP may conduct the following activities, the cost of which shall also be assessed to the Tribe as provided in Section C of this Article:

a. An annual comprehensive Compact compliance review, which shall be planned and conducted jointly with the Tribal Gaming Commission, of the Tribal Gaming Activities or any other tribal activities subject to this Compact to verify compliance with all provisions of this Compact (including Minimum Internal Controls) and with all applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming. This review shall include, at a minimum, a review in the following areas: administrative controls (Tribal Internal Controls), gaming operations controls, drop boxes, station inventories, surveillance department controls, cashier cage controls, count room controls (security and surveillance), accounting department controls (security), general controls (Compact regulatory requirements), blackjack controls, VLT controls, Class III accounts payable, employee identification, gaming chip inventory for gaming floor and cage, physical examination of all class III gaming cards, chips, e-proms, paper stock, printers, keno balls, fill slips, video gaming devices, keno controls, off-track betting and security department controls;

b. Periodic review of any part of the Tribal Gaming Activities or any other tribal activities subject to this Compact in order to verify compliance with all provisions of this Compact (including Minimum Internal

Controls) and with all applicable federal, state and tribal laws, including but not limited to National Indian Gaming Commission regulations, the Tribal Gaming Ordinance, and Tribal Internal Controls, policies and procedures that are applicable to the Tribal Gaming Operation and Class III Gaming;

c. Investigation of possible Violations and other gaming regulatory matters, whether discovered during the action, review, or inspection by OSP during its monitoring activities, or otherwise;

d. Investigation of possible criminal law violations that involve the Tribal Gaming Activities, whether discovered during the action, review, or inspection by OSP during its monitoring activities, or otherwise;

e. Periodic review of any contracts between the Tribe and suppliers, vendors or contractors that provide non-gaming goods or services to the Tribal Gaming Operation for the Gaming Facility as provided in Article VIII, Section L(3).

2. The parties agree that if any Class III Gaming activities are conducted or intermingled within the Tribe's Gaming Facility in such a way that they are inseparable from Class II Gaming activities, such as surveillance of both Class II and Class III Gaming operations by a single surveillance department or use of the same equipment in both operations, and the intermingling prevents the State from fulfilling its responsibilities under this Compact without reviewing or overseeing the Class II Gaming activities, OSP shall have full access to both for purposes of carrying out the duties of OSP with respect to Class III Gaming under this Compact.

3. OSP shall ensure that all personnel assigned to carry out the terms of the Compact shall be provided with adequate training for this purpose. The Tribe may request removal of a state law enforcement officer or auditor on the basis of conduct disrespectful of the Tribe or its culture. Effective performance of the officers' or monitor's duties shall not be the basis for disapproval. If the Tribe makes such a request, it shall meet with OSP to discuss the reason for the request, and OSP shall consider the request.

4. Access to Records. The State is authorized to review and copy, during normal business hours, and upon reasonable notice, any and all Tribal records pertaining to the Tribal Gaming Activities, including all Class III Gaming-related contracts, whether those records are prepared or maintained by the Tribe, the Tribal Gaming Commission or the Tribal Gaming Operation. The Tribe agrees to require applicants for a Tribal Gaming License to consent to disclosure to the State of Tribal records relevant to the determination of eligibility for licensing. The Tribe and the State agree that the Tribe shall include information obtained solely from tribal records in a separate section of the application that is submitted to the OSP, clearly identified as coming from tribal records by the heading: **"CONFIDENTIAL TRIBAL INFORMATION-DO NOT COPY"**. After review of such information, the OSP shall not retain and shall return promptly that

EXHIBIT 3

section of the application to the Tribal Gaming Commission, as agreed upon by the Tribal Gaming Commission and OSP. Information contained in other sections of the application may be retained by OSP, even if containing information from tribal records. OSP shall return to the Tribe copies of tribal documents related to background investigations within 60 calendar days of obtaining the copies. OSP shall be entitled to retain copies of the following: the Tribal Gaming Commission investigative report, a photograph of the applicant, and information release forms.

a. The Tribe acknowledges that any records created by or maintained by the State, including any records created or maintained in connection with the performance of the State's duties and functions under this Compact, belong to the State and are fully subject to the State of Oregon Public Records Law, ORS 192.410 to 192.505. Any information concerning the Tribal Gaming Activities that is contained in the State's records may be subject to disclosure under ORS 192.410 to 192.505, unless the State would be permitted to withhold that information from disclosure under ORS 192.410 to 192.505. Examples of the kind of information that may be withheld from disclosure by the State under appropriate circumstances include:

i. "Trade secrets" as defined in ORS 192.501(2);

ii. Investigatory information compiled for criminal law purposes as described in ORS 192.501(3);

iii. Information submitted in confidence, as provided in ORS 192.502(4), which could include, for example, information contained in state records which would reveal information about the operation of any Class III Game, about the Tribe's finances, or about the workings of the Tribal Gaming Operation that could reasonably assist a person in the conduct of activity that could adversely affect the fairness, integrity, security or honesty of the Class III Gaming activities; or

(iv) Operational plans in connection with an anticipated threat to individual or public safety as described in ORS 192.501(18);

(v) Records that would allow a person to gain unauthorized access to buildings or other property; identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body as provided in ORS 192.501(22);

(vi) Records that would reveal information relating to security measures, as described in ORS 192.501(23);

(vii). Any information the disclosure of which is specifically prohibited by state or federal law.

b. Applications submitted to and retained by OSP for Tribal Gaming Licenses are State records and may be subject to disclosure under ORS 192.410 to 192.505 unless the State would be permitted to withhold that information from disclosure under ORS 192.410 to 192.505.

c. Information about the Tribal Gaming Activities, whether obtained from the Tribe or from any other source, that is included in a document prepared, owned, used or retained by the State in connection with its duties and functions under this Compact may be subject to disclosure under ORS 192.410 to 192.505 unless the State would be permitted to withhold that information from disclosure under ORS 192.410 to 192.505or as otherwise provided by this Compact.

d. The Tribe has agreed to allow OSP access to sensitive financial, security and surveillance information that the Tribe considers confidential. The State acknowledges that the Tribe has voluntarily given the State access to this information and that the Tribe would not otherwise be required by law to do so. The State acknowledges that this information should reasonably be considered confidential. To the extent such information is included in any State records that are subject to disclosure, the State hereby obliges itself not to disclose this information when the public interest, including the public interest in maintaining the honesty, integrity, fairness and security of the Tribe's Class III Gaming activities, would suffer by such disclosure.

e. The State agrees to notify the Tribe promptly of any request for disclosure of documents containing information about the Tribal Gaming Activities. If the State decides to release any documents that contain information about the Tribal Gaming Activities, the State will notify the Tribe at least five (5) Business Days before any disclosure is made.

f. Any dispute as to the disclosure of documents under this Section B(4) shall be brought in the Oregon state courts.

g. Nothing in this Section B(4) precludes the State or the Tribe from disclosing information pursuant to state, tribal or federal rules of civil procedure or evidence in connection with litigation, a prosecution or criminal investigation, subject to any defenses either party may assert. The parties agree to assert available defenses to disclosure unless in that

party's determination, to do so would jeopardize the party's position in litigation.

5. Investigative Reports. After completion of any investigative report, OSP shall provide a copy of the report to the Tribal Gaming Commission. In cases where an investigation lasts longer than forty-five (45) calendar days, OSP shall notify the Tribal Gaming Commission at the expiration of the forty-five (45) calendar days and every thirty (30) calendar days thereafter in writing as to the status of the investigation, why the matter is taking longer than forty-five (45) calendar days, and the anticipated completion date of the investigation.

C. Assessment for State Monitoring, Oversight and Law Enforcement Costs.

1. The Tribe agrees that the federally-recognized Indian tribes in Oregon that conduct Class III Gaming ("Gaming Tribes") have the collective responsibility to pay for the costs of performance by OSP of its activities authorized under this Compact, including associated overhead ("OSP's Costs"). The Tribe agrees to pay its fair share of OSP's Costs pursuant to the memorandum of understanding entered between the Tribe and OSP in accordance with Section C(4) of this Article.

2. During the development of its biennial budget, OSP shall distribute a draft of the Tribal Gaming Section portion of the OSP budget to the Gaming Tribes for their review and comment prior to submitting the budget to the Governor and to the Legislature. OSP shall give full consideration to the Gaming Tribes' comments on the budget. Notwithstanding the right of the Gaming Tribes to comment on the budget, each Gaming Tribe retains the right to participate in any public review of the budget by either the Governor or the Legislature, as well as review before the Emergency Board for any increase in the budget.

3. Because of the government-to-government relationship between the Tribe and the State, the parties recognize that the Tribe's obligation to pay its fair share of OSP's Costs as provided by this Compact is unique. Nothing in this Compact is intended to, nor shall be construed as, creating a responsibility for the Tribe to pay for any other governmental services rendered by or received from the State.

4. No later than six (6) months before the date scheduled for commencement of Class III Gaming at the Gaming Facility, the Tribe and OSP shall execute a memorandum of understanding that includes the methodology for determining the amount of the Tribe's fair share of OSP Costs and the process for, including timing of, the Tribe's payments of its fair share of OSP Costs. The memorandum of understanding may be amended without amending this Compact.

5. If the Tribe disputes the amount of the OSP Costs under any invoice, the Tribe shall pay timely the undisputed amount within thirty (30) calendar days of the date the Tribe receives the invoice and shall notify OSP in writing of the

specific nature o the dispute for any disputed amount tha remains unpaid from that invoice. If the parties have not resolved the dispute within 15 calendar days after OSP receives the Tribe's notice, then the Tribe shall pay the disputed amount into an interest-bearing escrow account at a bank insured by the FDIC, that is separate and distinct from other tribal accounts, with escrow instructions providing that the funds (including interest) are to be released only upon authorization by both the Tribe and OSP. The parties shall share the reasonable costs of the escrow. The dispute shall then be resolved pursuant to the procedures set forth in Article XVII. If the Tribes fail to pay timely the disputed amount into escrow or pay timely the undisputed amount, the Oregon State Police may suspend any Background Investigations that are in process under Article VII or Article VIII, or both,4 or withhold authorization for the shipment of Class III Gaming equipment under this Compact, or the State may pursue other remedies for Compact violations available under this Compact or under IGRA, or any combination of the foregoing.

ARTICLE XI – TRIBAL REGULATORY STANDARDS

A. Health, Safety and Environmental Standards.

1. The Tribe agrees to adopt, and the Tribe shall enforce, health, safety and environmental ordinances applicable on the Cascade Locks Land. The health, safety and environmental ordinances must be at least as rigorous as comparable standards imposed by the laws and regulations of the State, unless the Tribe and State agree in the memorandum of understanding required by Section A(7) of this Article that the Tribe's agreement to comply with applicable federal law(s) satisfies any portion of the requirements of this Section A(1). The Tribe agrees to cooperate with any State agency or local public entity generally responsible for enforcement of such health, safety and environmental standards to assure that the planning, construction and operation of the Tribal Gaming Complex comply with such standards. The Tribe shall use its regulatory jurisdiction to assure that the standards contained in the health, safety and environmental ordinances are met and maintained..

2. The Tribe agrees that its activities on the portion of the Resort not on the Cascade Locks Land shall comply with applicable state and federal health, safety and environmental laws.

3. After the State has notified the Tribal Gaming Commission and the Tribe's regulatory body identified in the memorandum of understanding required under Section A(8) of this Article, the State may have state or local inspectors verify the Tribe's compliance with this Section A.

4. The Tribe's ordinances governing water discharges from the Tribal Gaming Complex shall be at least as protective of health, safety and the environment as the standards that would be imposed by the laws of the State of Oregon. However, to the extent there are federal standards specifically applicable

on the Cascade Locks Land that would preempt such State of Oregon standards, then such federal standards shall govern.

5. The Tribe shall take all steps reasonable and necessary to ensure ongoing availability of sufficient and qualified fire suppression services to the Tribal Gaming Complex. Any amounts paid by the Tribe to the City of Cascade Locks Article XVI, Section B(2)(b) may be used to satisfy this requirement. However, the Tribe acknowledges that the Tribe's obligations under this Section A(5) are not necessarily satisfied by such payments if such payments do not cover the full cost of adequate fire protection.

6. Upon request of the State, the Tribe agrees to provide evidence satisfactory to the State that any new construction, renovation or alteration of the Tribal Gaming Complex satisfies applicable health, safety and environmental standards of the Tribe. Satisfactory evidence includes a certificate or other evidence of compliance from the appropriate tribal official responsible for enforcement of tribal standards or from the appropriate state or local official responsible for enforcement of comparable state standards.

7. As used in this Section A, "health, safety and environmental standards" include but are not limited to structural standards, fire and life safety standards, water quality and discharge standards, food handling standards, and any other standards that are generally applicable under state or federal law to a non-tribal facility that is open to the public for purposes of protecting the public within the facility. "Health, safety and environmental standards" do not include land use regulations or zoning laws.

8. Prior to the commencement of construction of the Resort, but in no event later than one year before the date scheduled for commencement of Class III Gaming at the Gaming Facility, the Tribe and the State shall execute a memorandum of understanding that sets forth the health, safety and environmental standards that the Tribe will use to satisfy the requirements of this Section A and that identifies the Tribe's regulatory body(ies) that will enforce these standards.

B. Employment and Public Accommodations Standards.

1. The policy of the State of Oregon is to ensure that adequate employment and public accommodations standards are in place for the benefit of the employees and patrons of the Resort. The policy of the Tribe has been to provide its employees and patrons with rights, either through tribal ordinances or policies, that are in compliance with applicable federal law and that are generally consistent with the public policy of the State of Oregon in the area of employment rights and public accommodations. In order to codify and implement the Tribe's practices, and to insure that the employment and public accommodations laws at the Resort are commensurate with State of Oregon standards, the Tribe agrees to

adopt an employment and public accommodations ordinance applicable to the Resort ("Employment Ordinance").

2. Within one year following approval of this Compact by the Secretary of Interior, and prior to commencement of Class III Gaming at the Gaming Facility, the Tribe agrees to adopt the Employment Ordinance. The Employment Ordinance will address the following subject matters and provide standards equal or greater than the standards in the state or federal laws referenced below with respect to each of the following subject matter areas:

a. Payment and collection of wages (see ORS 652.110, 652.120, 652.140, 652.160, 652.190, 652.220, 652.240, 652.610, 652.620, 652.710 and 652.720 for comparable state standards).

b. Employee access to personnel records (see ORS 652.750 for comparable state standards).

c. Minimum wage of workers (see ORS 653.020, 653.025, 653.035 for comparable state standards).

d. Payment of employee overtime (see ORS 653.261, 653.268, 653.269 for comparable state standards).

e. Employment of minors (see ORS 653.305, 653.310, 653.315, 653.320, 653.326 for comparable state standards).

f. Non-discrimination in employment. The Employment Ordinance shall be consistent with standards set out in Title VII of the Civil Rights Act of 1964, 42 USC § 2000e, as amended. except that allowance may be made, at the Tribe's discretion, for the Tribe's Tribal Member and Indian Preference Policy (see Tribal Council Resolution No. 8363 (February 25, 1992)) and for the Tribe's Drug and Alcohol Free Workplace Policy (see Tribal Council Resolution No. 7116 (Nov. 15, 1988)).

g. Employee family medical leave (see ORS 659A.150 through 659A.174, 659A.186 for comparable state standards).

h. Non-discrimination in public accommodations (see ORS 659A.400 through 659A.409 for comparable state standards).

i. Federal Americans with Disabilities Act (ADA). The Employment Ordinance shall be consistent with standards set out in Title I and Title III of ADA (42 USC §§ 12112-12114 and 42 USC §§ 12182 and 12183).

3. Upon request of the State, but no more often than every two years, the Tribe agrees to review and update the Employment Ordinance to assure continued compliance with Section B(2) of this Article.

4. The Employment Ordinance shall contain a dispute resolution and enforcement process that provides for efficient, timely, unbiased, and fair resolution of disputes arising under the Employment Ordinance, with meaningful penalties for violations of the Employment Ordinance and an opportunity for appeal to a neutral third-party decision maker.

5. Any dispute between the Tribe and the State regarding compliance of the Employment Ordinance with Sections B(2) through B(4) of this Article shall be subject to the dispute resolution procedure set out in Article XVII .

C. Workers' Compensation Insurance. The Tribe agrees to provide workers' compensation insurance for the benefit of employees at the Resort and their beneficiaries to at least:

1. the level provided under the Warm Springs Tribal Workers' Compensation Code as in effect on the date of the execution of this Compact, or, at the Tribe's option,

2. the level required by ORS 656.001 through 656.990.

D. Unemployment Insurance. The Tribe agrees to provide unemployment insurance for the benefit of employees at the Resort through participation in the State's unemployment insurance system pursuant to ORS 657.425.

E. Occupational Safety and Health. The Tribe agrees that its activities on the Cascade Locks Land will comply with the federal Occupational Safety and Health Act of 1970, 29 USC § 651 *et seq*., as amended.

F. Tax Withholding. The Tribe shall report to the Oregon Department of Revenue gambling winnings paid to any person subject to Oregon personal income tax on those winnings whenever the Tribe would be required to report those winnings to the Internal Revenue Service. The Tribe shall make these reports to the State by submitting a copy of the reporting form the Tribe provides to the Internal Revenue Service or other form mutually agreeable to the Tribe and the State. The Tribe agrees that the management of the Resort will withhold and remit personal income taxes from employee wages to the Oregon Department of Revenue in the manner prescribed by the Department of Revenue. Withholding shall not be required where the earnings are exempt from personal income tax. The Tribe and the Oregon Department of Revenue shall agree on a procedure for prorating where the earnings are partially exempt.

G. Local Public Safety Issues.

1. If local government officials believe that an off-Cascade Locks Land public safety problem has been created by the existence of the Gaming Complex, the Tribe, or its designated representative, shall agree to meet with the mayor or county commission of the affected government to develop mutually-agreeable measures to alleviate the problem. This requirement is not limited to local governments located in Hood River County. If an off-Cascade Locks Land public safety problem has been created by the existence of the Gaming Complex, the Tribe shall undertake to perform any mutually-agreeable and reasonable measures to alleviate the problem. If the Tribe and local government officials are unable to agree on measures to alleviate the problem, the State may initiate the dispute resolution process established in Article XVII.

2. Before any Class III Gaming is conducted at the Gaming Facility, the Tribe shall enter a memorandum of understanding with the City of Cascade Locks and the County of Hood River regarding law enforcement coordination with the City and County.

ARTICLE XII – PROTECTION OF THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA

A. Consistency with Columbia River Gorge National Scenic Area Act.

The Tribe agrees that its activities pursuant to this Compact will be consistent with the Columbia River Gorge National Scenic Area Act, 16 USC § 544, *et seq.* (the "Gorge Act").

B. Design of the Resort.

1. The Tribe agrees that the design, construction and operation of the Resort will take into account the unique natural surroundings of the Cascade Locks Land, which is located within the Columbia River Gorge and Columbia River Gorge National Scenic Area. The parties agree that the Resort is intended to be of the highest architectural quality and constructed with appropriate materials that are compatible with the local environment and landscape.

2. The Tribe agrees to use appropriate energy efficient and other "green" building technologies and standards in the design and construction of the Resort in order to reduce environmental and energy consumption impacts of the Resort. The Tribe agrees to take into consideration the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") certification program and to incorporate appropriate elements from the LEED certification program into the design and construction of the Resort to the fullest extent practicable and economically feasible. Specifically, with respect to energy use, the Tribe agrees that it intends to design and build a facility that uses substantially less energy than a similar facility built to Oregon's current building code. The State agrees that State of Oregon agencies and expertise will be made available to the Tribe, as appropriate, to facilitate the design and construction of an energy-efficient Resort.

3. The Tribe agrees to consult with the State regarding the design of the Resort and agrees to address adequately any reasonable concerns promptly raised by the State regarding the design. An outline of the footprint and a conceptual rendering of the Tribe's current plans for the Resort, as contemplated by the parties at the time of the execution of this Compact, are attached as Exhibits G and H, respectively.

C. Renewable Energy.

The State and the Tribe agrees that the promotion of the use of renewable energy sources is good and mutually-beneficial public policy. To the extent practicable and economically feasible, the State and the Tribe agrees to work together, in a government-to-government manner and in conjunction with appropriate local and federal government entities, to pursue the use of renewable energy as a source of some or all of the Resort's energy needs or to pursue the development and use of renewable energy offsite in an effort to offset some or all of the energy use of the Resort, or both. Such efforts could include some or all of the following: the direct use of renewable energy sources by the Resort (such as use of solar panels or fuel cells), the indirect use of renewable energy sources by the Resort (such as the promotion and use of additional renewable energy sources by the local utility provider, which may be indirectly provided to the Resort), the development and use of renewable energy offsite by the Tribe or a tribal partner in an effort to offset some or all of the energy use of the Resort, or the purchase of renewable energy credits.

D. Traffic and Air Quality Impacts within the Columbia River Gorge National Scenic Area.

In an effort to protect air quality in the Columbia River Gorge and limit the emission of greenhouse gases, the Tribe shall develop a traffic management plan intended to minimize emissions caused by vehicular traffic to and from the Resort. The Tribe agrees to consult with the State in the development of such a plan and will address adequately any reasonable concerns raised by the State regarding the plan. Implementation of the traffic management plan must begin within one year following commencement of Class III Gaming at the Gaming Facility. The plan may include such initiatives as the promotion of the use of shuttles and modes of public transportation by patrons of the Resort, the use of alternative fuel vehicles or biofuels, or both, and the development or purchase of carbon offsets. These efforts shall be in addition to transportation planning efforts described in Article XIII.

E. Historic Columbia River Highway.

The Tribe and the State agree to work together to avoid adverse impacts on the Historic Columbia River Highway that may be caused by the Resort. The Tribe agrees to

pay the reasonable costs of any necessary improvements to the Historic Columbia River Highway as provided in Article XIII, Section H.

F. Impacts on Recreational Uses in the Columbia River Gorge National Scenic Area.

The Tribe is sensitive to and mindful of the recreational uses of the surrounding Columbia River Gorge Scenic Area and shall conduct its activities in such a manner so as to not unreasonably interfere with such uses.

G. Participation in Local Planning Discussions.

The Tribe agrees to participate with the Oregon Department of Land Conservation and Development, the City of Cascade Locks and Hood River County in any local planning processes involving the impact of the Resort on the City and local area.

H. Settlement of Hood River County Land Issues.

1. As part of the negotiated agreement authorizing Class III Gaming on the Cascade Locks Land, the Tribe and the State have agreed to settle a land dispute between the Tribe and the State and have agreed to the transfer of certain real property rights and interests by the Tribe to the State, as more fully described in this Section H. The Tribe agrees to forego and waive any future claim of legal right to conduct gaming on the Hood River Trust Land. The settlement of the land dispute, the Tribe's waiver of any right to conduct gaming on the Hood River Trust Land and the recording of the conveyance documents required by this Section H are conditions precedent to authorization of Class III Gaming on the Cascade Locks Land contained in this Compact.

2. Hood River Fee Lands. As more fully described in a memorandum of understanding to be executed by the parties, the Tribe agrees to execute and record all documents necessary to:

a. Grant to the State a perpetual conservation easement to the Hood River Fee Lands that prohibits gaming on or the future development (except limited recreational development as agreed to by the parties in the terms of the easement) of such lands, and

b. Transfer to the State the greatest ownership interest in the Hood River Fee Lands that the Tribe can lawfully transfer. The transfer shall be to the State of Oregon, through the Oregon Parks and Recreation Department, and shall be in a form acceptable to the State.

3. Hood River Trust Land. The Tribe agrees to seek and obtain the execution and the recording of any and all documents necessary to grant to the State a

perpetual conservation easement to the Hood River Trust Land that prohibits the future development (except limited recreational development as agreed to by the parties in the terms of the easement) of such land. The parties agree that the granting of a conservation easement to trust land requires action by the Secretary of the Interior. The Tribe agrees to seek immediately all necessary action by the Secretary of Interior to accomplish such conveyance.

4. Historic Columbia River Highway. The Tribe contends that the State's asserted title to a portion of the Historic Columbia River Highway (also known as the Historic Columbia River Highway Scenic Trail) and its buffer property may be defective and that such portion of the trail and buffer property may instead be part of land held in trust for the benefit of the Tribe. The State disagrees with the Tribe's legal assertion, and believes the State has full and clear legal title to such portion of the trail and buffer property. In order to settle this dispute, the Tribe agrees to waive and release all claims regarding the Historic Columbia River Highway and agrees to apply to the Secretary of Interior for approval of the grant to the State of an exclusive right of way through the purported trust property, mirroring the dimensions of the Historic Columbia River Highway and buffer property. The State's acceptance of this right of way shall not be deemed either an admission that the Tribe has any interest in such trail and buffer property or a waiver of the State's legal position that the State has full and clear title to such trail and buffer property.

5. The State shall have no obligation to accept any easement, deed or other property right to any property if the State determines it does not desire to accept such property; however, in such event, the State retains the right to direct the transfer to a third party if the State so chooses.

6. The Tribe shall not grant any additional property rights or interests (e.g. easements, mortgages, liens, rights of way), or seek approval by the Secretary of the Interior for the transfer of additional property rights or interests, to either the Hood River Fee Lands or Hood River Trust Land without the prior written consent of the State.

ARTICLE XIII - TRANSPORTATION ISSUES.

A. A substantial amount of traffic analysis has been prepared to support the Cascade Locks Resort and Casino Project Final Environmental Impact Statement, the Interchange Area Management Plan and the Cascade Locks Resort and Casino Project Access Point Decision Report. The identified traffic impacts of the proposed Resort established in the documents identified above on the State Highway System, including the Historic Columbia River Highway and Interstate 84, and on any city street or county road that may be used as access to the resort will form the basis for identifying transportation improvements necessary to maintain the level of service of the affected roadways as they existed prior to the opening of the resorts and to provide safe access to and from the resort.

B. A determination whether the Resort is to be served directly by a state highway or by a city street or county road shall be made by the State and appropriate local officials in consultation with the Tribe on a basis consistent with other proposed developments.

1. If access to the Resort is to be directly from a state highway, the Tribe shall apply for and obtain a road approach permit under Oregon Administrative Rules, Chapter 734, Division 51, and shall construct the approach and any other necessary improvements in accordance with that permit. A road approach permit shall not be denied because of the proposed use of the Tribe's land. The Tribe shall provide and maintain access from its Resort onto the highway that is adequate to meet standards of ODOT (freeway interchange spacing standards shall be addressed as provided in Section D of this Article), or shall enter into agreements with ODOT for the provision of such access by the State. The allocation of costs of constructing the road approach shall be as provided in Oregon Administrative Rule 734-051-0205, which provides that the costs of constructing the road approach shall be borne by the permit applicant.

2. If access to the Resort is to be directly from a city street or county road, and indirectly from a state highway, the Tribe shall comply with applicable city or county street or road improvement requirements and satisfy any requirements the State imposes on the county or city relating to access to a state highway.

C. Before any City Plan Amendments necessitated by transportation improvement plans related to the Resort, or in any event, before site plan approval, unless the Tribe and State agree otherwise, the Tribe and ODOT shall enter into a memorandum of understanding regarding Resort access, traffic improvements, maintenance of transportation infrastructure, cooperation regarding managing the effects of inclement weather on traffic safety in the vicinity of the Resort and any other transportation-related issues that may arise.

D. Traffic improvements shall be those improvements necessary to maintain the level of service of the affected highway(s), road(s) or street(s) as they existed prior to opening the Resort, and to provide safe access to and from the Resort. For highways, traffic improvements shall be consistent with the requirements of the State Highway Plan, including improvements necessary to mitigate traffic congestion, and to conform to ODOT access management policies, and Oregon Highway Plan Volume to Capacity Ratios (Table 6). With respect to the Oregon Highway Plan Interchange Spacing Standards (Tables 12 and 16), if it is determined that design exceptions to such standards must be pursued through ODOT and the Federal Highway Administration, ODOT agrees to facilitate, and support if appropriate, the application process by the Tribe or the City of Cascade Locks, or both, to secure approval of such design exceptions. The Tribe will

confer with ODOT, the Oregon Department of Land Conservation and Development and local government on an Interchange Area Management Plan.

E. Traffic improvements shall also be consistent with other applicable laws, including the following:

1. Federal Highway Administration standards related to Interstate 84.

2. The National Historic Preservation Act, 16 USC § 470 *et seq*.

3. The Gorge Act.

F. If ODOT determines that highway improvements are necessary, ODOT shall confer with the Tribe concerning the planning, design and construction of those improvements. ODOT shall confer with the Tribe concerning impacts to Interstate 84 and the need for traffic improvements to provide a visually cohesive appearance that embodies the aesthetic goals of the Columbia River Gorge National Scenic Area. The Tribe shall plan, design and construct any such improvements in accordance with ODOT's Interstate 84 Corridor Strategy Features Design Guideline.

G. The Tribe shall pay the reasonable cost of street, road and highway improvements determined to be necessary on the basis of the traffic impact study and ODOT requirements. If the Tribe disputes the amount of costs to be paid by the Tribe, the Tribe may initiate the dispute resolution procedure established under Article XVII.

H. The Tribe and the State agree to work together to avoid any adverse impacts on the Historic Columbia River Highway that may be caused by the Resort. The Tribe agrees to pay the reasonable cost for any improvements to the Historic Columbia River Highway determined to be necessary on the basis of the traffic impact study, and ODOT requirements. In accordance with Section 106 of the National Historic Preservation Act, the Tribe will confer with ODOT and the Oregon State Historic Preservation Officer to mitigate project impacts that may adversely affect the Columbia River Highway Historic District. If the Tribe disputes the amount of costs to be paid by the Tribe, the Tribe may initiate the dispute resolution procedure established under Article XVII.

I. If the Tribe plans additional development of the Resort, the Tribe shall advise the appropriate state and local transportation planning officials of the planned development by submitting a master plan. In planning street, road and highway improvements, the Tribe, state and local transportation planning officials shall plan for improvements using

the master plan. Construction of street, road and highway improvements may be completed in phases if practicable, and shall be consistent with this Article XIII.

J. The Tribe agrees to consult and cooperate with ODOT regarding any traffic issues arising out of the Resort and vehicles that patronize the Resort. The Tribe agrees to negotiate and execute an agreement with the governmental entity with jurisdiction over the impacted roads that covers the Tribe's contribution toward mitigating any traffic impacts on surrounding city, county or state roads.

ARTICLE XIV - TRIBAL LABOR RELATIONS ORDINANCE

A. Within six months following approval of this Compact by the Secretary of Interior the Tribe shall adopt and enforce an ordinance regulating labor-management relations at the Resort ("Tribal Labor Ordinance"). The Tribal Labor Ordinance shall contain the provisions set out in Section C of this Article.

B. The Tribal Labor Ordinance shall be an exclusive alternative to the National Labor Relations Act (29 USC §§ 151 through 169). Any union, union representative or labor organization that seeks to invoke the jurisdiction of the National Labor Relations Board (NLRB) may, at the Tribe's discretion, be barred by the Tribe from utilizing the processes and procedures set out in the Tribal Labor Ordinance. If a union or labor organization seeks to utilize the processes and procedures set out in the Tribal Labor Ordinance, such union or labor organization is encouraged to, and the Tribal Gaming Operation agrees to, enter into a recognition and neutrality agreement containing the provisions of the Tribal Labor Ordinance and any other provisions mutually agreed upon, in order to assist in enforcement of the Tribal Labor Ordinance by providing federal court jurisdiction under 29 USC § 185(a).

C. The following provisions shall be contained in the Tribal Labor Ordinance:

1. Recognition of any bargaining unit by a standard card check process (meaning the signing of cards by a majority of eligible workers), overseen by a neutral arbitrator. Standards for organizing, forming a bargaining unit and determining validity of the card check recognition process shall be consistent with those of the NLRB.

2. An eight month grace period following the commencement of Class III Gaming at the Gaming Facility, during which there shall be no union organizing efforts, and during which the Tribe shall maintain employer neutrality regarding organization.

3. Resolution of all collective bargaining issues that reach impasse by binding interest arbitration, based on either the labor organization's or management's last best offer.

4. Provision for exclusion of the following issues from collective bargaining: Tribe's employment preferences policy (see Tribal Council Resolution No. 8363 (Feb. 25, 1992)) and Tribe's Drug and Alcohol Free Workplace policy (see Tribal Council Resolution No. 7716 (Nov. 15, 1988)).

5. Provision for issues that may be considered by an arbitrator in the resolution of a collective bargaining impasse include:

a. wages, hours and other terms and conditions of employment of the Tribal Gaming Operation's competitors, or other businesses in Oregon and other states;

b. size and type of the Resort's operations;

c. ability of management to pay, if placed at issue by management (provided, however, that the labor organization shall be required to keep such information confidential);

d. regional and local market conditions;

e. ability of employees, through a combination of wages, hours and benefits to sustain themselves and their families;

f. cost of living based on statewide index;

g. factors uniquely applicable to the security needs of a gaming facility; and

h. any stipulations of the parties.

6. Prohibition of strikes (including boycotts, pickets, corporate campaigns, etc.) and lockouts-.

7. Reasonable provision for access within the Resort to lunch rooms and break rooms for a reasonable number of union organizers, after providing notice. If a labor organization seeks such access within the Resort, then the Tribal Gaming Commission may require the labor organization and union organizers to be subject to the same licensing rules that apply to Low Security Employees with similar levels of access within the Resort; provided, however, that such licensing requirements are reasonable, non-discriminatory and are not designed to impede access and any fees charged for such licensing are commensurate with fees charged to other individuals or organizations.

8. The Tribe may exclude the following classes of employees from the bargaining unit: security employees, commissioners and employees of the Tribal Gaming Commission, tribal government employees, handlers of cash related to Class III Gaming, cage personnel, dealers, auditors, supervisors (as defined in 29 USC § 152(11)), and any employees excluded under the NLRA.

9. After a grace period of eight months from the commencement of Class III Gaming at the Gaming Facility, and upon written request of a labor organization, provision for the Tribe to provide a labor organization with names, addresses and work classifications of eligible employees.

10. Provision that enrolled members of the Tribe may choose to not join a union or to pay dues or fair share fees to a union.

11. Provision for Unfair Labor Practices (ULPs) that are the same as those provided under the NLRA. Procedures regarding rules of evidence, statute of limitations, burden of proof and standards for determining the validity of ULP charges shall be based on the procedures and standards of the NLRB.

12. Provision for the award of fines by an arbitrator against either the Tribe or a labor organization of up to $20,000 for ULPs and provision for the award of fines by an arbitrator against the Tribe of up to $20,000 for violation of the employer neutrality described in Section C(2) of this Article.

13. Provision for decertification according to the procedures provided in the NLRA.

14. A process mutually agreeable to the parties for enforcement of an arbitrator's award or order and a process to challenge the legality of an arbitrator's decision; such processes must include ultimate recourse to a federal court, or if a federal court declines jurisdiction, to another court of competent jurisdiction.

15. Other provisions mutually agreed to by the Tribe and the State

D. The Tribal Labor Ordinance shall not contain provisions that are unlawful under the NLRA. The Tribe shall revise any provisions of the Tribal Labor Ordinance that are determined by a court or administrative body of competent jurisdiction to be unlawful under the NLRA to assure compatibility with the NLRA. The Tribal Labor Ordinance shall always provide for union recognition through card check to the fullest extent permissible under the NLRA, to the extent the NLRA applies to the Tribal Gaming Operation, or other applicable law.

E. Nothing in this Compact or in the Tribal Labor Ordinance shall be interpreted as expressing the Tribe's consent to application of the NLRA. If it determined by a court or administrative body of competent jurisdiction that the NLRA does not apply to the Gaming Complex or does not apply to the Resort, or if federal law is amended to exempt either the Gaming Complex or the Resort, or portion(s) thereof, from the NLRA, the terms of the Tribal Labor Ordinance and the requirements of this Article XIV shall remain in effect nonetheless.

F. The Tribe shall consult with the State regarding the development of the Tribal Labor Ordinance. Class III Gaming at the Gaming Facility may not commence until the Tribe has adopted a Tribal Labor Ordinance and the Tribe and State have mutually agreed that the Tribal Labor Ordinance is in compliance with this Compact. The State's agreement shall not be unreasonably withheld. Failure of the State to object to the terms of a proposed Tribal Gaming Ordinance within 30 calendar days following presentation to the State by the Tribe of the final Tribal Gaming Ordinance shall be deemed agreement.

ARTICLE XV – WARM SPRINGS TRIBES-OREGON BENEFIT FUND

A. In consideration for the economic benefits and exclusive rights provided by this Compact, for the right to conduct Class III Gaming on the Cascade Locks Land with the requested scope of Class III Gaming, for the perpetual nature of this Compact, for the resolution of issues regarding the Tribe's right to conduct Class III Gaming on the environmentally-sensitive Hood River Trust Land and the ownership of the portion of the Historic Columbia River Highway passing through the Hood River Trust Land without costly or prolonged litigation, for a compact that authorizes Class III Gaming at an economically-desirable location, and for the other meaningful concessions offered by the State in the course of good faith negotiations, the Tribe has agreed to contribute a portion of its revenues from the Gaming Facility to a fund benefiting the people of Oregon, as more fully described in this Article.

B. So long as the conditions described in Section C of this Article are satisfied, the Tribe shall make payments in the amounts provided in Section D of this Article.

C. Conditions.

1. The payments required by this Article are required only so long as there is a binding Class III Gaming compact in effect between the State and Tribe that allows for Class III Gaming on the Cascade Locks Land.

2. The payments required by this Article are required only so long as no non-Indian casino is operated in the State pursuant to a change in the State constitution that allows the operation of such a non-Indian casino in the State. However, this condition does not apply to an expansion of the Oregon State Lottery unless such expansion is accomplished through a constitutional amendment that permits the operation of a casino.

3. If any other federally-recognized Indian tribes are allowed to operate gaming facilities pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon, then, in each instance, all future Fund Contribution payments required by this Article shall be subject to modification as described below:

a. A testing period shall be established which shall be the twenty-four (24) month period following the opening of any such other facility(ies) (the "Testing Period"), subject to Sections C(3)(f) and (g) of this Article. The base period for calculation purposes described below (the "Base Period") shall be the most recent Fiscal Year prior to the start of the Testing Period.

b. If, at the end of the Testing Period, the Tribe can demonstrate consistent with Section G of this Article, that the annual Net Win of the Gaming Facility was reduced by twenty-five percent (25%) or more from the annual Net Win of the Base Period, then the Tribe's Fund Contribution payment obligation under Section D(1) of this Article will be reduced by the same percentage that Net Win was reduced during the Testing Period. Such reduction shall apply to all Fund Contribution payments due thereafter.

c. If the Fund Contribution amount that was paid for any of the Fiscal Years during the Testing Period was greater than the amount that should have been paid based on the modified rate calculated pursuant to Section C(3)(b) of this Article, then the Tribe shall receive a credit equal to such excess amount that shall be applied to any future Fund Contribution payments required by this Article.

d. If Section C(3)(b) of this Article is triggered and it is determined at the end of the Testing Period that the annual Net Win from the Gaming Facility was reduced by fifty percent (50%) or more from the annual Net Win of the Base Period, then the Fund Contribution payment obligation under Section D(1) of this Article shall be adjusted as follows:

EXHIBIT 3

i. If such Testing Period and reduction occurs during the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, then the Fund Contribution payment obligations shall be suspended and forgiven through the ninth (9th) Fiscal Year;

ii. If such Testing Period and reduction occurs after the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, then the Fund Contribution payment obligations for the next two (2) Fiscal Years shall be half of the amount that would otherwise be due after giving effect to the reduction under Section C(3)(b) of this Article; and

iii. After giving effect to the suspensions as described in Sections C(3)(d)(i) and (ii) of this Article, the Fund Contribution payment obligations shall recommence as modified pursuant to Section C(3)(b) of this Article.

e. For purposes of Sections C(3)(b) and (d) of this Article, a direct causal connection between the new facility(ies) and the decline in Net Win of the Facility shall be presumed, but the State may invoke the dispute resolution procedure established under Article XVII to present evidence that other unrelated factors contributed to the decline. However, any material increase from the Base Period to the Testing Period in the payment of Participation Fees (meaning an increase of more than ten percent (10%) of the total amount of Participation Fees paid) shall be disregarded for purposes of demonstrating a decline in annual Net Win.

f. If, during any Testing Period, another federally-recognized Indian tribe commences operation of a gaming facility pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon, then the Testing Period shall be extended to cover the 24-month period following the opening of such other facility(ies).

g. If, during any Testing Period, a tribal gaming facility that has been authorized under 25 USC § 2719(b)(1)(A) undergoes a material expansion (meaning an increase in the number of VLTs either by more than 500 or by more than fifty percent (50%) of the number of VLTs before the increase, whichever is less), then the Testing Period shall be extended to cover the 24-month period following such expansion.

h. If the Testing Period is extended pursuant to Section C(3)(g) of this Article, then on any Fund Contribution Deposit Date that occurs prior to the end of the expanded Testing Period, the Tribe may make an interim reduction of its payment obligation as provided in Section C(3)(b) or (d) of this Article as if the Testing Period were deemed concluded as of such date. If the State proves that the Fund Contribution amount that was paid

for any Fiscal Years during the Testing Period was less than the amount that should have been paid based on the modified rate calculated pursuant to Section C(3)(b) of this Article, then the Tribe shall pay such excess amount over the next five (5) Fiscal Years.

i. If another federally-recognized Indian tribe commences operation of a gaming facility pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon prior to establishment of a Base Period, then the State and the Tribe shall negotiate in good faith, based on financial information considered by the parties during the negotiating of this Compact and any additional relevant information provided by the parties, to reach agreement on what the annual Net Win of the Gaming Facility could reasonably have been projected to be for the one-year period in question prior to opening of the competing facility (the "Assumed Net Win"). The Tribe may reduce its Fund Contribution payments in the manner described in Sections C(3)(b) and (d) of this Article using the Assumed Net Win (rather than the actual Net Win) measured against a 24-month testing period that begins on the date Class III Gaming commences at the Gaming Facility.

D. Amount of Fund Contribution.

1. Except as otherwise provided in this Article, the Tribe shall pay the following amounts:

a. Fiscal Years One though Seven. For each of the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, the Tribe shall pay annually:

i. Six percent (6%) of Net Win for the first $1 to $160 million of Net Win;

ii. Twelve percent (12%) of Net Win for the next $1 to $40 million of Net Win; and

iii. Seventeen percent (17%) of all Net Win in excess of $200 million.

b. Fiscal Years Eight and beyond. Beginning with the eighth Fiscal Year following commencement of Class III Gaming at the Gaming Facility and for each Fiscal Year thereafter, the Tribe shall pay annually an amount equal to 17% of all Net Win.

2. Deferral Option.

a. If the amount due and payable under this Article for any of the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility exceeds fifty percent (50%) of Cash From Operations

Less Debt Service, the Tribe may defer payment of the amount due that is in excess of fifty percent (50%) of Cash From Operations Less Debt Service. For purposes of this section, "Cash From Operations Less Debt Service" means, for the period in question, the net cash flows from the Gaming Complex less payments of debt service on long-term indebtedness and capital lease obligations during such period, all as reflected on the audited financial statements of the Gaming Complex prepared in accordance with Section G of this Article.

b. Any amount deferred under Section D(2)(a) of this Article shall be due and payable when the amount for the tenth Fiscal Year is due and payable.

c. If, during the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, any other federally-recognized Indian tribe is able to operate a gaming facility pursuant to 25 USC § 2719(b)(1)(A) within the State, then any amounts deferred under this Section D(2) shall be forgiven and no longer be due or payable.

3. Credit Option.

a. The Tribe shall have the option of reducing any Fund Contribution obligations payable at a level of 17% of Net Win, as described in Section D of this Article, by as much as 2% (*i.e.*, from 17% down to 15%) by committing amounts to specified purposes mutually agreed upon in advance between the Tribe and State. Such purposes may include social, economic, and environmental/natural resource programs that enable the Tribe to provide a desired quality of life, family wage jobs, or mitigation of social and cultural problems on the Tribe's Warm Springs Indian Reservation or elsewhere within the State.

b. On or before 90 calendar days prior to the beginning of each Fiscal Year, the Tribe may deliver a written notice to the State identifying the particular purposes for which the Tribe shall seek a credit under Section D(3)(a) of this Article. Prior State approval of such purposes is necessary, but such approval may not be unreasonably withheld so long as the purposes are consistent with those identified in Section D(3)(a) of this Article.

c. The Tribe shall provide the State, upon the State's request, reasonable access to all documents, papers, plans, and other records pertinent to the specified purposes for which a credit option is claimed. If the State determines that the Tribe did not use the funds for the mutually agreed-upon purposes, then the Tribe shall immediately pay the amount of Fund Contribution reduction made available for those needs but not used for those needs.

4. Credit for Hood River Fee Lands.

Provided that full fee title to the Hood River Fee Lands has been transferred to the State as required by Article XII, Section H(2), and provided that such title has not reverted to the Tribe for any reason, then the Tribe's Fund Contribution due under this Article for the tenth one-year period following commencement of Class III Gaming at the Gaming Facility shall be reduced by one million five hundred forty-five thousand dollars ($1,545,000), which is equal to the Tribe's purchase price for the Hood River Fee Lands. If one million five hundred forty-five thousand dollars ($1,545,000) exceeds the amount due in that year, then the excess amount shall carry forward to subsequent years until satisfied. If, after the Tribe receives this credit for the purchase price of the Hood River Fee Lands, the transfer to the State is subsequently voided for any reason, then the credit shall revert back and such amount shall be repaid with the next Fund Contribution payment.

E. Payments.

1. Not later than the annual Deposit Date, the Tribe shall pay the total Fund Contribution amount due as provided in Section D of this Article for the most recent Fiscal Year.

2. Fund Contribution Purposes. The Tribe shall contribute, pay, and distribute the Fund Contribution for each fiscal year as follows:

a. To an Oregon public benefit non-profit charitable corporation, organized under ORS chapter 65 (or its successors or predecessors), that is qualified as exempt from income taxation under Internal Revenue Code ("IRC") section 501(c)(3) or the corresponding section of any future federal tax code; or to a statutorily-established fund in the State Treasury, separate from the General Fund; both for the purposes and under the circumstances described further below (the "Foundation"). After receipt by the Foundation, the Fund Contribution payments, plus any interest and other earnings derived therefrom ("income"), will be called the Warm Springs Tribes-Oregon Benefit Fund ("WST-OBF").

b. The Foundation shall expend moneys from the WST-OBF for the following purposes, provided that in no event shall the Foundation expend any funds for a purpose that will jeopardize the Foundation's IRC section 501(c)(3) exemption (if a non-profit corporation):

i. Not less than five percent (5%) nor more than ten percent (10%) of the Fund Contribution received each Fiscal Year, plus any income derived therefrom, shall be set aside and expended for the purposes of preserving, protecting or enhancing natural and cultural resources within the Columbia River Gorge Scenic Area; educating residents and visitors to the Columbia River Gorge

Scenic Area about the natural and cultural resources of the area; for the acquisition of land within the Columbia River Gorge Scenic Area by governmental entities or charitable organizations for preservation purposes; or for any combination of the foregoing. This portion of the Fund Contribution is not intended to fund an endowment, but rather is intended to be expended for qualifying purposes generally within three years of receipt. Notwithstanding the foregoing, the directors of the Foundation may decide to accumulate this portion of the Fund Contribution from multiple years in their discretion, if they deem such an accumulation to be necessary or appropriate to fund a proposed or potential qualifying major expenditure. The directors of the Foundation may decide in their discretion to set aside any amount ranging from five percent (5%) to ten percent (10%) of a Fund Contribution for a Fiscal Year for such charitable Columbia Gorge-related purposes.

ii. Up to but not exceeding Five (5%) of the Fund Contribution received each Fiscal Year, plus any income derived therefrom, may be set aside and expended for economic development assistance that is targeted (1) to aid an economically depressed or blighted area; (2) to benefit a disadvantaged group, such as the unemployed or underemployed; and (3) to aid businesses that have actually experienced difficulty in obtaining conventional financing (a) because of the deteriorated nature of the area in which they were or would be located or (b) to aid businesses that would locate or remain in the economically depressed or blighted area and provide jobs and training to the unemployed or underemployed from such area only if the Foundation's assistance was available. This portion of the Fund Contribution is not intended to fund an endowment, but rather is intended to be expended for qualifying purposes generally within three years of receipt. Notwithstanding the foregoing, the directors of the Foundation may decide to accumulate this portion of the Fund Contribution from multiple years in their discretion, if they deem such an accumulation to be necessary or appropriate to fund a proposed or potential qualifying major expenditure. The directors of the Foundation may decide in their discretion to set aside any amount ranging from zero to five percent (5%) of a Fund Contribution for a Fiscal Year for such charitable economic development purposes.

iii. A reasonable portion of the Fund Contribution not allocated above, or any income derived therefrom, may be used to pay the reasonable overhead, administrative, and investment expenses of the Foundation attributable to the management, investment, and distribution of the WST-OBF.

iv. The remainder of the Fund Contribution received each Fiscal Year shall be used (1) to provide direct financial assistance to residents of Oregon in pursuing a post-secondary education at public or private community colleges, colleges, or universities organized and located in Oregon; (2) to build an endowment fund, the income of which shall be used to provide direct financial assistance to residents of Oregon in pursuing a post-secondary education at public or private, community colleges, colleges, or universities organized and located in Oregon; or (3) to any combination of options (1) and (2) above, at the directors' discretion. The Foundation may cooperate with and provide support to the Oregon Student Assistance Commission or its successors in identifying appropriate individual recipients and in disbursing such financial assistance. The requirement that such financial assistance be "direct" does not preclude the Foundation, the Oregon Student Assistance Commission or any cooperating disbursing entity from making joint payments to a recipient and an educational institution.

3. Initial Foundation. Either before or within ninety days after the commencement of Class III Gaming at the Gaming Facility, the Tribe shall incorporate an Oregon public benefit non-profit charitable corporation under ORS chapter 65 (the "Initial Foundation").

a. The Initial Foundation shall be structured so as to qualify for an exemption from income taxation under IRC 501(c)(3), and it shall promptly seek such an exemption from the Internal Revenue Service.

b. The Tribe shall pay all costs of incorporating the Initial Foundation and of seeking and obtaining its IRC 501(c)(3) exemption, as well as all other expenses ordinarily associated with the establishment of an entity of that nature and preparing it to begin lawful operations.

c. The purposes of the Initial Foundation shall be to carry out the Fund Contribution purposes described above. In the event that the Initial Foundation does not obtain an IRC 501(1)(c)(3) exemption due to the proposed charitable economic development purpose, then the purposes of the Initial Foundation may be amended to delete the charitable economic development purpose. In no event shall the Initial Foundation amend the purposes stated in its Articles of Incorporation without providing sixty (60) days advance notice to the Tribe and to the Governor.

d. The Initial Foundation shall have no members.

e. The Initial Foundation shall be managed by a board of directors. The Board shall consist of an odd number of at least nine and not more than thirteen directors. The actual number of directors shall be determined from time to time by the board. The initial and successor directors shall be chosen in the following categories:

i. Category I: At least one and not more than three shall be chosen from among civic, charitable or public service leaders as follows: if the Board has nine directors, then one from Category I, if the Board has eleven directors, then two from Category I, and if the Board has thirteen directors, then two or three from Category I;

ii. Category II: At least four and not more than six shall be chosen from among persons in the business community with extensive experience making major investment decisions, as follows: if the Board has nine directors, then four from Category II, if the Board has eleven directors then five from Category II, and if the Board has thirteen directors, then five or six from Category I;

iii. Category III: At least two and not more than four shall be chosen from among persons knowledgeable in post-secondary education or financial assistance as follows: if the Board has nine directors then two from Category III, if the Board has eleven directors then three from Category III, and if the Board has thirteen directors, then three or four from Category III; and

iv. Category IV: At least one and not more than two shall be chosen from among enrolled members of the Confederated Tribes of the Warm Springs Reservation, provided that such individuals are not officers or employees of the Tribal Gaming Commission or Tribal Gaming Operation, as follows: if the Board has nine or eleven directors then one from Category IV, and if the Board has thirteen directors, then two from Category IV.

f. The board shall establish an advisory committee from persons with demonstrated interest or experience in Columbia Gorge issues to assist the board in making decisions about Foundation expenditures related to the Columbia Gorge Scenic Area.

g. Although the Governor and the Tribe shall confer about and agree upon the initial directors, neither the Tribe nor the Governor shall control or direct the operations of the Foundation, and any replacement directors shall be elected by the board. The directors shall serve in their individual capacities and not at the pleasure or direction of the Governor or the Tribe, and their actions shall not constitute the actions of the Governor, the State, or the Tribe. The initial directors shall serve a term an initial term of one

year, and thereafter, the directors shall serve a defined term in years, which terms shall be staggered. Except for directors who are elected to terms of one, two, or three years, the term of each director shall be four years. A director shall not be eligible for more than two consecutive full four-year terms. Representatives of banks or trust or other companies that serve the corporation, and attorneys, accountants, or other professionals who serve the corporation for compensation may not serve as directors.

h. The directors may receive reimbursement for reasonable expenses incurred in connection with the performance of their duties, pursuant to polices approved by the board.

4. Alternative Foundation. In the event that the Initial Foundation does not obtain an exemption from income taxation under IRS 501(c)(3) or loses that exemption, or the Governor and the Tribe cannot agree upon at least nine initial directors for the Initial Foundation, or the Initial Foundation alters its purposes so that they are no longer consistent with Section E(2)(b) and Section E(3) of this Article, or the parties to this Compact otherwise agree, then the Fund Contribution shall be paid to a then-existing Oregon non-profit charitable corporation that is exempt from income taxation under IRC section 501(c)(3) and that is willing and able to manage the WST-OBF in accordance with the terms of the Compact ("Alternative Foundation").

a. The Governor and the Tribe shall confer about and agree upon the selection of such an Alternative Foundation.

b. The Alternative Foundation must be willing to form advisory committees of individuals with an interest or background in the particular area of expenditure (i.e., Columbia River Gorge and financial assistance for post-secondary education) to inform the Alternative Foundation's decisions in those areas, recognizing that the Alternative Foundation will have the ultimate responsibility for decisions about individual expenditures.

c. If the Initial Foundation does not obtain an IRC 501(1)(c)(3) exemption due to the proposed charitable economic development purpose, or if an otherwise acceptable Alternative Foundation is not willing or able to carry out the charitable economic development purposes of the Foundation, then such purposes may be deleted, and the Alternative Foundation will not be expected or required to carry out or consider such purposes.

5. Statutory Foundation. In the event that an Initial Foundation is not formed, the Initial Foundation does not obtain an exemption from income taxation under IRS 501(c)(3) or loses that exemption, or the Governor and the Tribe cannot agree upon the initial directors for the Initial Foundation, and the Governor

and the Tribe cannot agree upon an Alternative Foundation or the Alternative Foundation loses its IRC section 501(c)(3) exemption or the Initial or Alternative Foundation cannot or are not maintained for any other reason, then the State shall have three years from the commencement of Class III Gaming at the Gaming Facility or three years from the date that the Initial Foundation or the Alternative Foundation loses its IRC section 501(c)(3) exemption, whichever date is later, to enact laws that establish the Foundation as a dedicated fund or dedicated funds in the State Treasury, provided that the shares and uses of such funds must be consistent with the terms of this Compact.

a. The statutorily-established fund or funds must be separate and distinct from the General Fund.

b. The fund or funds may be invested as provided by ORS 293.701 to 293.820. Any income generated by such a fund must be credited to that fund.

c. The fund or funds must be managed by a board of directors appointed and subject to removal by the Governor.

d. If legislation providing for such statutorily-established funds is not enacted and effective within such a three-year period, then the Tribe is relieved of making any Fund Contribution payments to any foundation under this Compact, provided that the Tribe shall contribute such amounts to its Community Benefit Fund. In that event the Tribe and the State agree that they shall reopen compact negotiations for the limited purpose of renegotiating the purposes of the Community Benefit Fund and the structure and membership of the Community Benefit Fund Board to provide greater state representation on the Board.

6. Not a Tax. The parties agree that the Fund Contribution payments contributed and delivered as provided in this Article XV are not intended to be considered or deemed a tax to be received directly by the General Fund of the State.

7. No Third Party Rights. Notwithstanding the purposes of the Fund Contribution payments, nothing herein shall be deemed to provide any third parties either expressly or impliedly with any rights under this Compact or rights to the Fund Contribution.

8. Partial Fiscal Year. For timing purposes, any partial Fiscal Year consisting of six full calendar months or more shall be treated as a complete Fiscal Year, and any partial Fiscal Year consisting of less than six full calendar months shall not be counted as a Fiscal Year. If the year in which the Gaming Facility opens for business is not long enough to be deemed a "Fiscal Year," then for that period: (a) the Tribe shall pay a prorated amount based upon Net Win

annualized for the period in question, and (b) such payment shall be made on the date that would otherwise be deemed the Deposit Date if such period had been a full Fiscal Year.

9. Payment Escrow – Pre-Foundation Fund Contributions. If a Fund Contribution payment is due before the Initial Foundation has been incorporated and its initial directors appointed, before the Initial Foundation has received its IRC section 501(c)(3) exemption, before an Alternative Foundation has been selected (if applicable), or before the State, for any reason, has statutorily established a fund or funds as contemplated by Section E(5) of this Article (if applicable), then the Tribe shall deposit any Fund Contribution amounts that become due (or relevant portion(s) thereof) into an interest-bearing escrow account, at a bank insured by the FDIC, that is separate and distinct from other Tribal accounts. Upon receiving notice that the Initial Foundation has been incorporated, its initial directors appointed, and that it has an IRC section 501(c)(3) exemption; an Alternative Foundation has been selected; or a dedicated statutory fund has been established; as is appropriate under the circumstances, the Tribe shall cause the escrowed Fund Contribution amounts, plus accrued earnings, to be paid to the appropriate entity or fund.

10. Payment Escrow – Litigation. In the event litigation is commenced concerning the lawfulness of Fund Contribution payments to any fund or entity designated hereunder to receive the Fund Contribution, then, during the pendency of any such litigation, the Tribe shall deposit the accruing Fund Contribution payments associated with such litigation only into an interest-bearing escrow account, at a bank insured by the FDIC, that is separate and distinct from other tribal accounts. If a court of competent jurisdiction enters a final, non-appealable order that upholds the lawfulness of the contested payment or payments, the Tribe shall promptly pay, but in any event within thirty (30) days, the balance of the escrow account, including accrued interest, to the then-appropriate fund(s) or entity(ies). In the event that a court of competent jurisdiction enters a final, non-appealable judgment that determines that the contested payment or payments is or are not lawful, then the State shall have three years from the date that the determination becomes final (i.e., after all appeals are exhausted or the time to petition for reconsideration or for further judicial review expires) to create an alternative payment arrangement that is consistent with any such judicial ruling and with this Compact. The Tribe shall continue to pay the Fund Contribution payment portion(s) into the escrow account during such three year period, and upon the timely establishment of such an alternative arrangement, the Tribe shall promptly pay, but in any event within thirty (30) days, the balance of the escrow account, including accrued interest, to the recipient designated by the State as the alternative recipient. In the event that the State fails to establish timely an alternative payment arrangement, then the then-existing escrow account balance shall be released and paid to the Tribe, provided that the Tribe shall contribute such amounts to its Community Benefit Fund.

11. Non-displacement. In agreeing to make the Fund Contribution payments, the Tribe intends that such payments should be enhancements to the otherwise existing resources of such public funds or entities that may receive the benefit of such payments and desires that the payments not be used as a basis to decrease, offset or displace the funds currently being used to support such activities.

F. If, during the term of this Compact, a State court finds that Oregon State Lottery operations have been expanded in violation of Article XV, Section 4 of the Oregon Constitution, then the Tribe may elect to deposit ten percent (10%) of its future Fund Contribution payments into an interest-bearing escrow account at a bank insured by the FDIC, that is separate and distinct from other accounts of the Tribe, pending exhaustion of any appeals. If the State court finding is ultimately sustained, the Tribe may recover the escrowed amounts (and interest). If the State court finding is ultimately denied, the Tribe shall pay promptly the escrowed amounts (and interest) in accordance with Section E of this Article.

G. The Tribe will maintain for its Tribal Gaming Operation a system of accounting established and administered in accordance with GAAP, and shall furnish to the State within 120 calendar days after the close of each Fiscal Year audit reports of the Tribal Gaming Operation certified by independent certified public accountants selected by the Tribe and not unreasonably objected to by the State. To the extent permitted under ORS 192.502(4), the State will treat such audit reports and other confidential information obtained under the terms of this Compact as confidential information and not disclose them to any persons without the Tribe's express written authorization to do so.

H. Annual Fund Contribution Report. Within one hundred twenty (120) calendar days after the end of any Fiscal Year, the Tribe shall provide a report to the State that details the Fund Contribution amount contributed by the Tribe during that preceding Fiscal Year.

I. The State acknowledges that its claim that payment of any Fund Contribution amount be made shall be subordinate to any claim on revenues from Tribal Gaming Operations by a senior lien holder providing financing for the Resort and infrastructure relating thereto; provided, however, that any such claim shall not be subordinate to any lien holder providing financing for off-site, functionally-unrelated facilities. Notwithstanding the foregoing, the Tribe' obligation to pay the Fund Contribution amounts shall not be extinguished by such subordination.

ARTICLE XVI – COMMUNITY BENEFIT FUND

A. Establishment of Fund.

1. The Tribe agrees to establish a Community Benefit Fund, pursuant to tribal law, within ninety (90) calendar days of the commencement of Class III Gaming at the Gaming Facility. The Community Benefit Fund Board of Trustees, created pursuant to Section C of this Article, shall establish by-laws and any other

charter documents that may be appropriate to govern the operation of the Fund. Such charter documents must be consistent with the requirements of this Article.

2. Not later than the Deposit Date, the Tribe shall contribute to the Fund an amount calculated as provided in Section D of this Article. The Tribe, in its discretion, may choose to make early payments to the Fund, subject to reconciliation within 150 calendar days after the end of the appropriate Fiscal Year. The monies of the Fund shall be maintained at a bank insured by the FDIC, in an account separate and distinct from other accounts of the Tribe. Any and all interest on such monies or increase in the assets of the Fund shall be allocated to future charitable contributions as set out in this Article.

B. Fund Administration.

1. The assets of the Fund shall be expended for the benefit of the public primarily within

a) Hood River, Wasco, Jefferson, Sherman, Gilliam, Wheeler, Deschutes, Crook, Clackamas, Multnomah and Washington Counties and, as determined by the Board of Trustees created pursuant to Section C of this Article, elsewhere within the State of Oregon;

b) any Native American Tribal government agency or Native American charitable organization with its principal office and base of operations within the State of Oregon;

c) Skamania County;

d) any national or regional Indian organization.

Grants from the Fund may be made to charitable organizations that qualify as 501(c)(3) entities under the Internal Revenue Code or to governmental bodies, including the Tribe and the Columbia River Gorge Commission, for any of the following purposes: education; health; public safety; gambling addiction prevention, education and treatment; the arts; the environment; cultural activities; historic preservation; and such other charitable purposes as may be provided in the by-laws of the Fund, including for the purposes of preserving, protecting and enhancing natural and cultural resources within the Columbia River Gorge Scenic Area; provided that no more than 30% of the total annual amount of grants from the Fund shall be awarded to recipients outside the State of Oregon under Section XVI(B)(1)c or d. However, except for pledges specifically authorized in Section B(2)(b) of this Article, grants from the Fund may not be used to satisfy obligations of the Tribe that arise elsewhere in this Compact.

2. The Tribe may enter into an agreement with the City of Cascade Locks (the "City") to pledge the following amounts from the Community Benefit Fund:

a. From the contribution to the Community Benefit Fund for the first Fiscal Year of operation, up to $700,000 may be pledged to the City for law enforcement, fire and emergency response services or infrastructure or

for other community benefit purposes agreed to between the Tribe and the City. From the contribution to the Community Benefit Fund for subsequent Fiscal Years, the total amount of such pledges may increase up to three percent (3%) per annum.

b. From the contribution to the Community Benefit Fund for the first Fiscal Year of operation, a one-time pledge of up to $500,000 may be made to the City for immediate enhancements to the law enforcement, fire and emergency responses services or infrastructure of the City. This pledge is in addition to the pledge permissible under Section B(2)(a) of this Article, but may not recur. If such a pledge is made but cannot be satisfied in full from the contribution to the Community Benefit Fund for the first Fiscal Year of operation, the unsatisfied portion of such pledge may be carried forward to subsequent Fiscal Years until satisfied.

c. Pledges agreed to by the Tribe and the City may be paid at any time mutually agreed to between the Tribe and the City and credited against the contribution to the Community Benefit Fund for the appropriate Fiscal Year.

3. Reasonable administrative costs of the Community Benefit Fund, including the retention of accountants and other professionals as necessary, may be made from the Fund, as long as such costs do not exceed the average percentage of overhead costs of similar-sized charitable foundations in the State of Oregon. However, members of the Community Benefit Fund Board of Trustees shall serve without salary or other compensation.

4. The Board of Trustees created pursuant to Section C of this Article may reserve a portion of the Fund in a single year to fund a multi-year grant or grants.

C. Community Benefit Fund Board of Trustees.

1. The Fund will be administered by a board of nine (9) trustees ("Board of Trustees"). Each trustee shall have an equal vote on actions of the Board of Trustees. Each trustee shall owe a fiduciary obligation to the Fund.

2. The members of the Board of Trustees must be residents of the State of Oregon and shall be appointed as follows:

a. Three (3) enrolled members of the Tribe, appointed by the Tribal Council;

b. One (1) representative of the Tribal Gaming Operation Board of Directors, appointed by the Tribal Council;

c. Two (2) members, who are not affiliated with the Tribe, appointed by the City Council of Cascade Locks;

d. One (1) member, who is not affiliated with the Tribe, appointed by the Hood River County Board of Commissioners;

e. One (1) member with a unique interest in the protection and conservation of the Columbia River Gorge, appointed by the Governor; and

f. One (1) member appointed by agreement of the other eight members.

D. Calculation of Fund Contribution. The Tribe's annual charitable contribution amount shall be calculated by multiplying the Net Income of the Gaming Complex from the previous Fiscal Year by six percent (6%). For purposes of this Section D, "Net Income" means the amount of total net income indicated on the audited financial statement for the Gaming Complex that has been prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). (For purposes of this Section D, the audited financial statements for the Gaming Complex may include the adjacent parking facilities, Interstate 84 interchange, and related road construction, not located on the Cascade Locks Land.)

F. Termination of Fund Contributions. The Tribe's contributions to the Community Benefit Fund established in this Article are required only so long as no non-Indian casino is operated in the State pursuant to a change in the State constitution that allows the operation of such a non-Indian casino in the State. This condition does not apply to an expansion of the Oregon State Lottery unless such expansion is accomplished through a constitutional amendment that permits the operation of a casino.

G. Annual Fund Report. The bylaws and other charter documents of the Fund shall provide that, within 150 calendar days of the end of any Fiscal Year, the Board of Trustees shall provide a report to the Governor detailing the amount contributed to the Fund during the Fiscal Year, detailing the calculation of the amount contributed to the Fund, and listing the grantees of the Fund and the amounts of the grants since the last report. The State may at its discretion and expense perform an audit of the calculation of the Tribe's contribution to the Fund.

H. The Board of Trustees shall provide a copy of the Fund's bylaws and any other charter documents and amendments thereto to the Governor and OSP. The Board of Trustees shall address adequately any reasonable concerns raised by the State regarding the bylaws and charter documents.

ARTICLE XVII – DISPUTE RESOLUTION

A. Notice. If either party to this Compact concludes that the other party has violated a term of this Compact, that party shall give written notice to the other party. The written notice shall describe the factual basis for the concern.

B. Standard Dispute Resolution Process.

1. The parties shall meet and confer within ten (10) calendar days after receipt of the notice.

2. If the issue is not resolved informally to the satisfaction of both parties, either party may initiate mediation or non-binding arbitration. To be qualified, an arbitrator must have some background and familiarity with Federal Indian law and IGRA.

3. If either party initiates arbitration, an arbitrator shall be selected in the following manner:

a. The parties shall obtain a list of qualified arbitrators from U.S. Arbitration and Mediation of Oregon, or any other arbitration panel agreed to by the parties.

b. Each party, in turn, shall strike one name from the list, until one name remains. The parties shall draw lots to determine which party makes the first strike.

4. Upon agreement by both parties, the arbitration proceeding may be converted from non-binding to binding.

5. The parties shall divide the cost of the mediation or arbitration proceeding equally between them. The State's share of mediation or arbitration costs shall be paid from a fund other than the funds of the OSP Tribal Gaming Section.

6. Upon conclusion of the mediation or arbitration proceeding, if the parties have not elected to be bound by that result, either party may initiate an action in court as provided in Section E of this Article.

C. Expedited Dispute Resolution Process.

1. The Expedited Dispute Resolution Process provided herein is intended to be applied only in situations where the State reasonably concludes that a Compact violation may result in immediate and serious harm if corrective action is not taken and the Standard Dispute Resolution Process set out in Section B of this Article would likely be untimely and inadequate. The State may invoke these expedited procedures if it concludes that a Compact violation

a. poses an immediate and serious threat to the fairness, integrity, security or honesty of the Tribal Gaming Activities; or

b. poses an immediate and serious threat to public safety; or

c. is part of a willful and continuous pattern of Compact violations of which the Tribal Gaming Commission has been repeatedly advised and as to which the State has provided ten (10) Business Day prior written notice of intent to invoke this Expedited Dispute Resolution provision .

2. The State shall immediately give written notice to the Tribal Gaming Operation and the Tribal Gaming Commission of its invocation of this Expedited Dispute Resolution process. The written notice shall describe the basis for the State's concern. The parties shall confer as soon as possible, but in no event later than three (3) Business Days after the Tribal Gaming Commission receives the notice in an effort to resolve the issue. If, after conferring the issue is not resolved informally to the satisfaction of both parties, or if the parties have not conferred within three (3) Business Days, or if an immediate and serious threat to public safety makes conferring impossible or impracticable, then the State shall provide a second written notice to the Tribal Gaming Operation and the Tribal Gaming Commission which describes the specific action(s) the State believes to be necessary to immediately remedy the State's concerns. Either party may then initiate the Standard Dispute Resolution Process in Section B of this Article.

3. Upon receiving the second written notice provided to the Tribe pursuant to Section C(2) of this Article , the Tribe agrees that the Tribe, Tribal Gaming Commission or Tribal Gaming Operation, or any combination of those entities (as appropriate), shall take immediate action to implement the State's recommendation or otherwise take mutually acceptable action to address the State's concerns pending a final resolution of the dispute. If the Tribe successfully pursues legal action pursuant to Section E of this Article to enjoin imposition of remedies under Section C(4) of this Article, the Tribe shall not be required to implement the State's recommendation. This Section C(3) shall apply pending the outcome of the Standard Dispute Resolution Process under Section B of this Article.

4. If, following the conference with the State provided for under Section C(2) of this Article, the Tribe, Tribal Gaming Commission or the Tribal Gaming Operation, or any combination of those entities (as appropriate), do not take immediate action to implement the State's recommendation or otherwise take mutually-acceptable action to address the State's concerns, pending a final resolution of the dispute, the State may impose one or more of the following remedies:

a. withhold authorization for shipment of VLTs or other Class III Gaming supplies or devices;

b. suspend authorization for the operation of all Table Games or Counter Games or any portion thereof;

c. suspend authorization for the operation of any number of VLTs; or

d. where the State believes the Compact violation poses an immediate and serious threat to public safety, as described in Section C(1)(b) of this Article, require the closure of the Gaming Complex or a portion of the Gaming Complex to the public.

5. If the Tribe fails to comply with the remedy imposed by the State pursuant to Section C(4) of this Article, the State may initiate an action in court as provided in Section E of this Article for a court order to compel the action. In that event, the prevailing party shall be entitled to its reasonable attorneys' fees and costs, provided however, that the State's obligation under this Section C(5) shall be no greater than the amount of, and paid as a credit against the amount of, the Tribe's future Fund Contribution obligations under Article XV.

6. Notwithstanding the foregoing provisions of this Section C, if the State invokes the Expedited Dispute Resolution Procedures of this Article XVII, then the Tribe may at anytime initiate an action in court as provided in Section E of this Article for declaratory relief. The Tribe may initiate such an action if the Tribe believes that the State's actions or threatened actions are inconsistent with this Compact (e.g., because no Compact violation has occurred, because the State's remedy is inappropriate, or because the State was not entitled to invoke the Expedited Dispute Resolution provisions of the Compact). In that event, the prevailing party shall be entitled to its reasonable attorneys' fees and costs, provided however, that the State's obligation under this Section C(6) shall be no greater than the amount of, and paid as a credit against the amount of, the Tribe's future Fund Contribution obligations under Article XV.

7. For purposes of Section C(1)(a) of this Article, "immediate and serious threat to the fairness, integrity, security and honesty of the Tribal Gaming Activities" includes, but is not limited to, the following examples:

a. The Tribe, Tribal Gaming Commission or Tribal Gaming Operation consummates, or fails to terminate, a Class III Gaming Contract that is not authorized pursuant to Article VIII.

b. After notice from the State alleging a Compact violation, the Tribal Gaming Commission licenses or continues to license or the Tribal Gaming Operation employs or continues to employ a High Security Employee who does not qualify for licensure under Article VII.

c. A malfunction of gaming equipment hardware or software causes patrons of the Gaming Facility to lose money, and that loss is directly related to the equipment malfunction.

d. The security of Class III Gaming equipment has been impaired by loss, theft, or tampering.

e. The Tribal Gaming Operation operates or the Tribal Gaming Commission authorizes operation of any VLT or type of Class III Gaming not authorized by Article V or without following the procedures in Article V, Section F.

8. For purposes of Section C(1)(b) of this Article, "immediate and serious threat to public safety" includes, but is not limited to, the following examples:

a. Violations of applicable fire and life safety standards.

b. Violation of applicable standards intended to protect health.

9. For purposes of Section C(1)(c) of this Article, "willful and continuous pattern of Compact violations of which the Tribal Gaming Commission has been repeatedly advised" include but is not limited to, the following examples:

a. A willful and continuous pattern of Tribal Gaming Commission failures to notify OSP regarding Gaming Related Criminal Activity as provided in Article X, Section A(2), or failures to cooperate in the investigation of Gaming Related Criminal Activity as provided in Article VI, Section A and Article X, Section A(2)(e), of which the Tribal Gaming Commission has been repeatedly advised.

b. A willful and continuous pattern of failure by the Tribe, the Tribal Gaming Commission or management of the Tribal Gaming Operation to enforce compliance with the provisions of this Compact, or the regulations and internal controls governing the Tribal Gaming Activities, of which the Tribal Gaming Commission has been repeatedly advised.

c. A willful and continuous pattern of Tribal Gaming Operation or Tribal Gaming Commission failures to provide OSP with access to the Gaming Facility as provided in Article X, Sections B(1) and B(2) or access to records as provided in Article X. Section B(4), of which the Tribal Gaming Commission has been repeatedly advised.

d. A willful and continuous pattern of actions by the Tribe, the Tribal Gaming Commission or management of the Tribal Gaming Operation which intentionally impedes or otherwise prevents OSP from fulfilling its

monitoring function pursuant to this Compact, of which the Tribal Gaming Commission has been repeatedly advised.

D. The parties agree that disputes regarding the payment of Fund Contribution or payments to the Community Benefit Fund are to be resolved using the Standard Dispute Resolution Process and not the Expedited Dispute Resolution Process.

E. Court Actions.

1. Either party may initiate an action against the other party in the United States District Court for the District of Oregon pursuant to this Article to interpret or enforce the provisions of this Compact. In no event shall this Section E be construed as a waiver by the State of the State's sovereign immunity based on the Eleventh Amendment to the United States Constitution. The State and the Tribe agree that IGRA grants subject matter jurisdiction to the United States District Court to hear compact enforcement actions and that IGRA contains a Congressional waiver of tribal sovereign immunity for that purpose.

2. However, in the event that the Federal court declines jurisdiction, an action can be filed in a State court of competent jurisdiction to interpret or enforce the provisions of this Compact.

3. Sovereign Immunity.

a. State Waiver of Sovereign Immunity. The Oregon legislature has waived the State's sovereign immunity to suit in state court pursuant to ORS 30.320.

b. Tribal Waiver of Sovereign Immunity. THIS WAIVER OF THE SOVEREIGN IMMUNITY OF THE TRIBES FROM SUIT OR ACTION IS ADOPTED PURSUANT TO THE TERMS OF WARM SPRINGS TRIBAL CODE CHAPTER 30 AND SHALL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. The Tribe hereby waives its immunity to suit in state court for the limited purpose of enforcing this Compact according to the terms of this Article.

F. In any court action initiated pursuant to Section E of this Article, the prevailing party shall be entitled to its reasonable attorneys' fees and costs, provided however, that the State's obligation under this Section F shall be no greater than the amount of, and paid as a credit against the amount of, the Tribe's future Fund Contribution obligation under Article XV.

G. Nothing in this Article shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce the provisions of this Compact or

limit or restrict the ability of the parties to pursue, by mutual agreement, alternative methods of dispute resolution.

H. Nothing in this Compact shall be construed to limit the authority of the State or the United States to take immediate action to enforce and prosecute the gambling laws of the State and the United States pursuant to 18 USC § 1166 (Section 23 of IGRA).

I. The monetary obligations created by or arising as a result of this Compact are unsecured obligations of the Tribe, the Tribal Gaming Operation and any other entity as may be created by the Tribe for operation and management of the Resort. The Tribe and the State agree that in the event of legal proceeding resulting in a money judgment in favor of the State related to obligations under this Compact or other court order requiring payment of money relating to any obligation arising under this Compact, including to any entity other than the State such as any entity designated to receive Fund Contribution under Article XV, Section F, any cash proceeds of the business operations of the Resort shall be subject to levy or other enforcement action, and the State may proceed to enforce any court order against the Tribe, including any Tribal Business Entity which may have possession of such cash proceeds at the time of the levy or other enforcement action.

J. The Tribe and the State recognize that it may be difficult or impossible for the State to invoke effectively the Expedited Dispute Resolution Process under Section C of this Article in an effort to remedy any perceived violation of Article V, which restricts certain types of gaming on the Warm Springs Reservation. In the event that the State reasonably believes that the Tribe is conducting gaming on the Reservation in violation of Article V of this Compact, the State may, as provided under this Article, invoke the Expedited Dispute Resolution Procedures contained in Section C of this Article as if the Compact violation were occurring at the Gaming Facility.

K. This Compact shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

ARTICLE XVIII – EFFECTIVE DATE; EXHIBITS; TERMINATION; AMENDMENTS

A. Effective Date. This Compact shall become effective upon approval by the Secretary of the Interior pursuant to IGRA. However, this Compact does not authorize Class III Gaming on the Cascade Locks Land until all of the following have occurred:

1. All documents necessary to effectuate settlement in favor of the State of the Tribe's claim regarding the Historic Columbia River Highway as provided in Article XII, Section H(4), have been executed and recorded;

2. All documents necessary to grant to the State a Conservation Easement on the Hood River Trust Land as provided in Article XII, Section H(3), have been executed and recorded;

3. All documents necessary to effectuate the conveyances related to the Hood River Fee Lands as provided in Article XII, Section H(2), have been executed and recorded;

4. The Secretary of the Interior has taken the Cascade Locks Land into trust for the benefit of the Tribe and for gaming purposes pursuant to 25 USC § 2719(b)(1)(A).

B. Termination. This Compact shall remain in effect until such time as:

1. This Compact is terminated by written agreement of both parties;

2. The State amends its Constitution or laws to prohibit criminally within the State conduct of all of the Class III Gaming authorized by this Compact, whether for profit or not for profit;

3. A court of competent jurisdiction makes a final determination that all of the types of Class III Gaming authorized by this Compact are criminally prohibited under the law of the State, and the determination has become final and enforceable;

4. The United States Congress amends or repeals IGRA so that a compact is no longer required for the Tribe to offer Class III Games;

5. A party to this Compact gives written notice of termination to the other party following a final and binding determination by a court of competent jurisdiction or arbitrator that a party is refusing to negotiate in good faith to amend this Compact as required in Article XVIII, Section D, and such failure has continued for 30 calendar days following the date of such determination (a "final determination" is one that is no longer appealable);

6. A party to this Compact gives written notice of termination to the other party following a final determination by a court of competent jurisdiction or arbitrator that a party is in material breach of this Compact and such material breach continues for 30 calendar days following the date of such determination (a "final determination" is one that is no longer appealable); or

7. a. Any of the following occurs:

i) the Department of Interior denies the Tribe's application to have the Cascade Locks Land taken into trust pursuant to 25 CFR Part 151;

ii) the Department of Interior makes an unfavorable determination pursuant to 25 U.S.C. § 20(b)(1)(A) and 25 CFR 292.21(b), or

iii) the Governor does not concur with the Secretary's favorable determination pursuant to 25 U.S.C. § 20(b)(1)(A) and 25 CFR 292.23;

b. And either the Tribe or the State thereafter gives written notice of termination to the other party.

8. Either party revokes its waiver of sovereign immunity described in Article XVII, Section E, and the other party thereafter gives written notice of termination to the revoking party.

C. Automatic Amendment.

1. If a type of Class III Gaming authorized under Article V, Section B(1) is criminally prohibited by an amendment to state statute or Constitution, then, during the effective period of such amendment, this Compact shall no longer authorize the Tribe to engage in that type of Class III Gaming, and any provisions in this Compact authorizing such Class III Gaming shall be void and of no effect.

2. If a court decides that a type of Class III Gaming authorized under this Compact is criminally prohibited, then, during the effective period of such decision, this Compact shall no longer authorize the Tribe to engage in that type of Class III Gaming, and any provisions in this Compact authorizing such Class III Gaming shall be void and of no effect.

3. If a type of Class III Gaming authorized under this Compact is criminally prohibited as provided under Sections C(1) and C(2) of this Article, the Tribe shall be required to cease operating that form of Class III Gaming only if and under the same circumstances and conditions as the State or any other affected person must cease operating the corresponding Class III Gaming.

4. If a type of Class III Gaming authorized by this Compact becomes criminally prohibited as provided in Sections C(1) or C(2) of this Article, but is later reauthorized by law, then the Tribe may provide 30 calendar days prior written notice to the State of its intent to recommence such Class III Gaming. During the 30 day notice period, the Tribe and OSP shall work together to assure that adequate procedures and regulations are in place to assure that such Class III Gaming is conducted in a manner that safeguards the fairness, integrity, security and honesty of the Class III Games and is consistent with this Compact.

D. Amendments.

1. This Compact may be amended by the parties. All amendments must be in writing. No amendment to this Compact is effective until the amendment has been signed by all parties and approved by the Secretary of the Interior.

2. Either party may request negotiations to amend this Compact. A request to negotiate must be in writing and must be sent by certified mail to the appropriate recipient or recipients as provided Article XXI. Both parties agree to negotiate in good faith. If either party fails to negotiate in good faith, then the other party may initiate the dispute resolution procedure under Article XVII. If a court of competent jurisdiction or arbitrator determines that a party is failing to negotiate in good faith, and such failure continues for 30 calendar days after the date of such determination, then such breach of this Compact is grounds for termination of this Compact pursuant to Section B of this Article.

E. Kah-Nee-Ta Compact. In the event this Compact is declared void for any reason by a court of competent jurisdiction after Class III Gaming at the Gaming Facility has commenced, and the Tribe thereafter terminates Class III Gaming on the Cascade Locks Land, but the Class III Gaming that is the subject of this Compact remains lawful for the Tribe under IGRA, the parties agree that the Kah-Nee-Ta Compact, shall be reinstated as the Class III Gaming compact between the Tribe and the State. The Tribe agrees to provide 30 day prior written notice to the State of its intent to commence Class III Gaming under the Kah-Nee-Ta Compact. Such reinstatement shall take effect upon the date of closure of the Cascade Locks Gaming Facility, upon the date Compact is declared void, or 30 calendar days following the written notice to the State, whichever occurs last. During the 30-day waiting period, the Tribe and State will work together to ensure that Class III Gaming to occur pursuant to the reinstated compact is in compliance with the terms and conditions of that compact and is conducted in a manner that safeguards the fairness, integrity, security and honesty of the Class III Games.

ARTICLE XIX – DISCLAIMERS AND WAIVERS

A. Gaming at Another Location or Facility. Except as provided below, the Tribe hereby waives any right it may have under IGRA to negotiate a compact for Class III Gaming at any different or additional location or facility. However, the Tribe does not waive any right it may have to negotiate to amend or replace the Kah-Nee-Ta Compact to authorize Class III Gaming on the Tribe's trust land in Jefferson or Wasco counties that may be eligible for gaming pursuant to IGRA, in lieu of the Class III Gaming at Kah-Nee-Ta Lodge authorized by the Kah-Nee-Ta Compact. Any gaming authorized by such an amendment shall be consistent with Article V(C)(3) of this Compact. In addition, the Tribe does not waive any right it may have to negotiate a compact for Class III Gaming at an additional facility in the event that another tribe that is operating a gaming facility in this State signs a compact that authorizes that tribe to operate more than one gaming facility simultaneously, or is otherwise authorized to operate more than one gaming facility simultaneously. Further, the Tribe does not waive any right it may have to negotiate a compact for Class III Gaming at a different facility in the event that a physical calamity makes operation of Class III Gaming on the Cascade Locks Land unfeasible. Notwithstanding this Section A, the State does not concede that the Tribe has a right to negotiate a compact for Class III Gaming at any additional or different facility in any event.

B. Prohibition on taxation by the State. Nothing in this Compact shall be deemed to authorize the State to impose any tax, fee, charge or assessment upon the Tribe or Tribal Gaming Operation, except as expressly authorized in accordance with this Compact.

C. Preservation of Tribal Self-Government. Except as provided in Article VII, Section A(4)(a) and Article X, Section A, nothing in this Compact shall be deemed to authorize the State to regulate in any manner the government of the Tribe, including the Tribal Gaming Commission, or to interfere in any manner with the Tribe's selection of its governmental officers, including members of the Tribal Gaming Commission. No licensing or registration requirement contemplated by this Compact shall be applicable to such officers with respect to their capacity as officers of the Tribe.

D. Nothing in this Compact diminishes or eliminates the State's regulatory authority with respect to lands that are not Indian trust lands.

E. This Compact is exclusively for the benefit of and governs only the respective authorities of and the relations between the Tribe and the State. The State and the Tribe are the only parties to this Compact and are the only parties entitled to enforce the terms of this Compact. Nothing in this Compact gives, is intended to give, or shall be construed to give or provide, any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Compact.

F. Nothing contained in the provisions of this Compact shall be deemed binding precedent on the State regarding any future request to negotiate a Class III Gaming compact or concur in the taking of land into trust for gaming purposes.

G. Relationship of the Parties. The relationship between the parties to this Compact shall be that of independent sovereign governmental entities. Nothing in this Compact shall be construed to constitute the parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking.

H. Headings. The headings used for the sections herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Compact.

ARTICLE XX – SEVERABILITY

In the event that any section or provision of this Compact is held invalid, or its application to any particular activity is held invalid, it is the intent of the parties that the remaining sections of the Compact and the remaining applications of such section or provision shall continue in full force and effect. Notwithstanding the foregoing, if any of the following sections or provisions, or any portion thereof, are held invalid by a court of competent jurisdiction, or their application to any particular activity is held invalid by a court of competent jurisdiction, then, unless otherwise agreed by the parties in writing,

the Compact in its entirety shall be deemed invalid, and Tribe shall immediately cease Class III Gaming at the Gaming Facility:

A. Article V, Section C, Gaming Location;

B. Article X, Section B, State Enforcement of Compact Provisions;

C. Article X, Section C, Assessment for State Monitoring and Law Enforcement Costs;

D. Article XII, Section H, Settlement of Hood River County Land Issues;

E. Article XV, Warm Springs Tribes-Oregon Benefit Fund;

F. Article XVI, Community Benefit Fund.

ARTICLE XXI – NOTICE

A. Notice and Receipt of Notice. Except as otherwise expressly provided in this Compact or agreed in writing by the parties, any communications between the parties or notices to be given under this Compact shall be given in writing and delivered by facsimile, personal delivery, or mailing the same, postage prepaid, to Tribe or State at the address, number set forth in this Article, or to such other addresses or numbers as either party may indicate pursuant this Article XXI. Any communication or notice so addressed and mailed shall be deemed received three (3) Business Days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date the transmitting machine generates a notice of the successful transmission, if transmission was during normal business hours, or on the next Business Day, if transmission was outside the Business Day. Any communication or notice delivered by personal delivery shall be deemed received when actually delivered. The parties may agree in writing to a process for sending and determining receipt of notices by electronic mail or by any other means.

B. Notice Addresses and Numbers.

1. All notices required or authorized to be delivered to OSP under this Compact shall be delivered to the following:

Captain
Oregon State Police
Gaming Enforcement Division
400 Public Service Building
Salem, OR 97310

FAX: 503-378-8282

2. All notices required or authorized to be delivered to the Tribal Gaming Commission under this Compact shall be delivered to the individual, address and fax number provided to the State in writing by the Tribe.

3. All other notices required or authorized to be delivered under this Compact, and all notices to the Tribal Gaming Commission for which the State does not have the information required under Section 2 of this Article, shall be delivered to the following:

Legal Counsel to the Governor
Office of the Governor
254 State Capitol
Salem, OR 97301

FAX: 503-378-4863

Secretary/Treasurer of the
Tribal Council
Confederated Tribes of the
Warm Springs Reservation
of Oregon
P. O. Box C
Warm Springs, OR 97761

FAX: 541-553-2236

ARTICLE XXII – COORDINATION MEETING

No later than 3 months following the effective date of this Compact or on a later date mutually agreed to by the parties, and at regular intervals thereafter as agreed by the parties, the Tribe and the State agree to meet and review the status of all memoranda of understanding, rules, regulations, ordinances, procedures, and any other requirements under this Compact, that must be completed and effective prior to the commencement of Class III Gaming at the Gaming Facility or shortly thereafter. For easy reference purposes, the chart below lists particular actions required by this Compact, with the applicable section references and deadlines, which are subject to this requirement:

Action	Compact Section	Deadline For Completion
Tribal Labor Ordinance	XIV	Six months following approval of Compact by Secretary of the Interior
Employment Ordinance	XI.B(2)	One year following approval of Compact by Secretary of the Interior
Health, Safety and Environmental Standards MOU	XI.A(8)	Prior to construction of the Resort and at least one year prior to scheduled commencement of Class III Gaming
Transportation MOU	XIII.C	Prior to City Plan Amendments or site plan approval, or as otherwise agreed

MOU regarding OSP costs	X.C(4)	Six months prior to scheduled commencement of Class III Gaming
Tribal regulatory certification	V.F(1), (2)	Six months prior to scheduled commencement of Class III Gaming
MOU regarding criminal law enforcement	VI.A(2)	Before commencement of Class III Gaming
Establishment of Community Benefit Fund	XVI	Within 90 days following commencement of Class III Gaming
Establishment of WST-OBF Initial Foundation (unless otherwise agreed)	XV	Within 90 days following commencement of Class III Gaming

In addition and without limitation, the parties also agree to confer regarding the status of the following: compliance with the liability insurance requirements of Article IX, Section G; compliance with the workers' compensation insurance requirements of Article XI, Section C; compliance with the unemployment insurance requirements of Article XI, Section D; design of the Resort pursuant to Article XII, Section B(3); the use of renewable energy at the Resort pursuant to Article XII, Section C; development of traffic management plan and consultation on plan development pursuant to Article XII, Section D; efforts to avoid adverse impacts on the Historic Columbia River Highway pursuant to Article XII, Section E and Article XIII, Section H; the execution and recording of property rights and interests required by Article XII, Section H; and the provision of a traffic impact study to ODOT and the City of Cascade Locks pursuant to Article XIII, Section A.

ARTICLE XXIII – INTEGRATION

This Compact, and the Kah-Nee-Ta Compact,, and all memoranda of understanding between the parties that are required or referenced under this Compact and in effect on the effective date of this Compact, constitute the entire agreement between the parties on the subject matter hereof. There are no other understandings, agreements, or representations, oral or written, not specified or referenced herein regarding this Compact or the subject matter hereof.

STATE OF OREGON

Theodore R. Kulongoski, Governor

Date: 11-18-10

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Stanley "Buck" Smith, Chairman
Warm Springs Tribal Council

Date: 11-12-2010

APPROVED FOR LEGAL SUFFICIENCY

Stephanie L. Stri[illegible]
Senior Assistant Attorney General

Date: 19 Nov 2010

APPROVED BY THE SECRETARY OF THE INTERIOR

Deemed Approved
JAN 07 2011

Date:_____

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CHEROKEE NATION, *et al*., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF THE INTERERIOR, *et al*., *Defendants*.	Civil Action No. 1:20-cv-2167 (TJK)

DEFENDANTS CHIEF BUNCH AND MEKKO GIVENS' STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. The United Keetoowah Band of Cherokee Indians in Oklahoma is a federally recognized Native American Tribe. Pls.' Second Amend. Compl., ECF # 104 at ¶ 18.	
2. The Kialegee Tribal Town is a federally recognized Native American Tribe. Pls.' Second Amend. Compl., ECF # 104 at ¶ 19.	
3. Cherokee Nation is a federally recognized Native American Tribe. Pls.' Second Amend. Compl., ECF # 104 at ¶ 8.	
4. Chickasaw Nation is a federally recognized Native American Tribe. Pls.' Second Amend. Compl., ECF # 104 at ¶ 9.	
5. Choctaw Nation is a federally recognized Native American Tribe. Pls.' Second Amend. Compl., ECF # 104 at ¶ 10.	
6. Citizen Potawatomi Nation is a federally recognized Native American Tribe. Pls.' Second Amend. Compl., ECF # 104 at ¶ 11.	
7. Debra Haaland is Secretary of the Interior. Pls.' Second Amend. Compl., ECF # 104 at ¶ 1 n.1.	

8. Bryan Newland is the Assistant Secretary – Indian Affairs. Pls.' Second Amend. Compl., ECF # 104 at ¶ 1 n.1.	
9. Defendant Joe Bunch is Chief of the United Keetoowah Band of Cherokee Indians in Oklahoma. Pls.' Second Amend. Compl., ECF # 104 at ¶ 18.	
10. Defendant Brian Givens is Mekko of the Kialegee Tribal Town. Pls.' Second Amend. Compl., ECF # 104 at ¶ 19.	
11. Kevin Stitt is the Governor of Oklahoma. Pls.' Second Amend. Compl., ECF # 104 at ¶ 15.	
12. Governor Stitt signed a tribal-state compact with Chief Bunch for the United Keetoowah Band of Cherokee Indians in Oklahoma on July 1, 2020. Pls.' Second Amend. Compl., ECF # 104 at ¶ 101.	
13. Governor Stitt signed a tribal-state compact with Mekko Givens for the Kialegee Tribal Town on July 1, 2020. Pls.' Second Amend. Compl., ECF # 104 at ¶ 101.	
14. Both tribal-state compacts authorize the respective tribes to operate Class III covered games. Pls.' Second Amend. Compl., ECF # 104, Ex. 3 at 202, 215 and Ex. 4 at 229, 242.	
15. The United Keetoowah Band of Cherokee Indians in Oklahoma Compact is a site-specific compact for a facility within the exterior boundaries of Logan County. Pls.' Second Amend. Compl., ECF # 104, Ex. 3 at 207.	
16. The Kialegee Tribal Town Compact is a site-specific compact for a facility within the exterior boundaries of Oklahoma County. Pls.' Second Amend. Compl., ECF # 104, Ex. 4 at 234.	
17. Both tribal-state compacts included an agreement by the Governor of Oklahoma to concur in any determination by the Secretary of the Interior to take land into trust for gaming purposes within the agreed-upon counties. Pls.' Second Amend. Compl., ECF # 104, Ex. 3 at 207 and Ex. 4 at 234.	
18. Both tribal-state compacts included an agreement by the tribes to pay a Substantial Exclusivity Fee to the State of Oklahoma. Pls.' Second Amend. Compl., ECF # 104, Ex.	

3 at 215–19 and Ex. 4 at 242–45.	
19. Both tribal-state compacts included an agreement by the tribes to certify annually that the gaming revenues from their respective site-specific facilities were derived at least 80% from Covered Games. Pls.' Second Amend. Compl., ECF # 104, Ex. 3 at 202–03 and Ex. 4 at 229.	
20. Both tribal-state compacts included an agreement by the tribes that the substantial exclusivity guarantees to the tribes would not prohibit the State to operate an iLottery in the future. Pls.' Second Amend. Compl., ECF # 104, Ex. 3 at 202 and Ex. 4 at 229.	
21. Chief Bunch and Mekko Givens submitted the compacts to the United States Department of the Interior on July 1, 2020. Pls.' Second Amend. Compl., ECF # 104 at ¶ 101.	
22. Plaintiffs submitted comments to the Secretary of the Interior setting forth objections to the tribal-state compacts between Oklahoma and the United Keetoowah Band of Cherokee Indians in Oklahoma and between Oklahoma and the Kialegee Tribal Town. Pls.' Second Amend. Compl., ECF # 104 at ¶ 102.	
23. On April 24, 2020, Governor Stitt submitted to the Secretary of the Interior a memorandum on his authority to compact and the legality of two tribal-state compacts that had been submitted to the Secretary of the Interior—the Comanche and Otoe-Missouria Compacts. Pls.' Second Amend. Compl., ECF # 104 at ¶ 82.	
24. On May 5, 2020, the Oklahoma Attorney General submitted comments to the Secretary of the Interior that opposed approval of the Comanche and Otoe-Missouria Agreements and argued that the Governor lacked the authority to enter into such tribal-state compacts. Pls.' Second Amend. Compl., ECF # 104 at ¶ 89.	
25. On September 8, 2020, the Secretary of the Interior published notice in the Federal Register that the compacts for the United	

Keetoowah Band of Cherokee Indians in Oklahoma and the Kialegee Tribal Town were deemed approved due to the Secretary taking no action during the 45-day statutory window. Pls.' Second Amend. Compl., ECF # 104 at ¶ 106.	
26. On January 26, 2021 the Oklahoma Supreme Court held that the Governor lacked the authority under Oklahoma law to enter into the tribal-state compacts with the United Keetoowah Band of Cherokee Indians in Oklahoma and the Kialegee Tribal Town. Pls.' Second Amend. Compl., ECF # 104 at ¶ 231.i.	
27. Chief Bunch and Mekko Givens have made public representations about their authority to enter into the tribal-state compacts, the validity of the compacts, and their intention to act under the terms of the compacts. Second Amend. Compl., ECF # 104 at ¶ 231.k–l.	
28. Neither the United Keetoowah Band of Cherokee Indians in Oklahoma nor the Kialegee Tribal Town have opened a gaming facility pursuant to their respective compacts or conducted any gaming activity pursuant to their respective compacts. Second Amend. Compl., ECF # 104 at ¶ 215, 218; Decl. of Klint Cowan, Attorney General of the UKB and Counsel to the KTT at ¶ 2.	

Dated: March 14, 2022

Presented by:

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Attorneys for Defendants, JOE BUNCH in his official capacity as Chief of the United Keetoowah Band of Cherokee Indians in Oklahoma, and BRIAN GIVENS, in his official capacity as the Mekko of the Kialegee Tribal Town