

STIPULATED NOTICE OF VIOLATION  
and  
PRE-OPENING AGREEMENT

This Agreement is entered into by and between the Omaha Tribe of Nebraska ("Tribe"), through its duly authorized representatives, and the Chairman of the National Indian Gaming Commission ("NIGC" or "Commission"). By this Pre-Opening Agreement, the parties stipulate to the violations described below; settle the stipulated Notice of Violation (NOV); and settle an outstanding civil fine. This Pre-Opening Agreement specifies various compliance measures the Tribe will take as a condition to resuming gaming operations.

I. Notice of Violation

1. The Chairman of the NIGC hereby gives notice that the Omaha Tribe of Nebraska (hereafter referred to as "the Tribe"), a federally recognized Indian tribe with tribal headquarters in Macy, Nebraska, has violated NIGC regulations, 25 C.F.R. § 501 *et seq.*
2. The circumstances of the non-submission of audit violations are as follows:
  - a. IGRA requires that tribes submit annual audits of each gaming operation. 25 U.S.C. § 2710(b)(2)(C).
  - b. NIGC regulations require that a tribe cause to be conducted an annual independent audit of the financial statements of each gaming operation on Indian lands and submit a copy of the audit report(s) to the NIGC within 120 days after the end of each fiscal year. 25 C.F.R. §§ 571.12, 571.13.
  - c. In accordance with statements issued by the American Institute of Certified Public Accountants, the audit report shall include both the SAS 112, *Communicating Internal Control Related Matters Identified In An Audit*; and SAS 114, *The Auditor's Communication With Those Charged With Governance*. NIGC Bulletin 09-01. The reports must also include a management letter(s) setting forth the results of the annual audit(s). 25 C.F.R. § 571.13.
  - d. The Tribe licensed and operated two gaming operations, Casino Omaha and Lucky 77, which were open and operating during all or

part of the tribal gaming operations' fiscal year from October 1, 2007 to September 30, 2008.

- e. The audit reports for Casino Omaha and Lucky 77 gaming operations were each due to the NIGC on January 28, 2009, 120 days after the gaming operations' fiscal years ended on September 30, 2008. 25 C.F.R. § 571.13.
  - f. NIGC received the Lucky 77 audit on January 30, 2009, but did not receive the audit for Casino Omaha until July 29, 2009.
  - g. By submitting a late audit for Casino Omaha, the Tribe violated NIGC regulations.
3. The circumstances of the late fee payments and quarterly statement violation are as follows:
- a. The Tribe licensed and operated two gaming operations, Casino Omaha and Lucky 77, which were open and operating during all or part of calendar years 2008 and 2009.
  - b. The quarterly statements are due March 31, June 30, September 30, and December 31 of each calendar year the gaming operation is subject to the jurisdiction of the NIGC. 25 C.F.R. § 514.1(c)(2). The quarterly statements shall be transmitted to the Commission to arrive no later than the due dates. 25 C.F.R. § 514.1(c)(4).
  - c. Fee payments must be sent to the NIGC with the quarterly statements. 25 C.F.R. § 514.1(c)(5).
  - d. The Tribe submitted the fee payment due on March 31, 2009, for Casino Omaha on April 3, 2009, and failed to submit the related required quarterly statement due on March 31, 2009. Further, the Tribe did not submit the quarterly statement for Lucky 77 until April 23, 2009.
  - e. By submitting a late fee payment for Casino Omaha, the Tribe violated NIGC regulations.
  - f. The Tribe also violated NIGC regulations by submitting the related quarterly statements for Lucky 77 in an untimely manner and failing to submit the statement for Casino Omaha entirely.

4. The Chairman has authority to levy and collect appropriate civil fines, not to exceed \$25,000 per violation, against the tribal operator of an Indian game or management contractor engaged in gaming for any violation of any provision of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations. 25 U.S.C. § 2713(a)(1); 25 C.F.R. § 575.4. "If noncompliance continues for more than one day, the Chairman may treat each daily act or omission as a separate violation." 25 C.F.R. § 575.4(a)(2).

## II. Stipulations and Agreement For Settlement

1. This Agreement is entered into by and between the Tribe by duly authorized officers or agents, and the Chairman of the NIGC pursuant to 25 C.F.R. 573.6(b) and shall be effective upon execution by the parties.
2. The Tribe admits the facts set out in Section I, paragraphs 2 and 3 of this Agreement. Further, the Tribe agrees that NIGC has jurisdiction over this action and agrees to comply with the corrective measures set forth in sections III and IV of this Agreement.
3. The Tribe is aware of its right to:
  - a. Appeal the notice of violation to the full Commission under 25 C.F.R. part 577;
  - b. Obtain a hearing to contest the matter under 25 C.F.R. part 577; and
  - c. Appeal any final determination by the full Commission to a federal district court under 25 U.S.C. § 2714.
4. The NIGC and the Tribe stipulate that this Notice of Violation shall be deemed a final order of the Commission and a final agency action pursuant to 25 C.F.R. § 577.9(d).
5. The NIGC acknowledges that prior to the execution of this Stipulated Notice of Violation, the Tribe took affirmative steps to address the circumstances giving rise to this matter, including voluntarily closing the Casino Omaha in an effort to regain regulatory compliance through reorganization, training, and hiring new staff. While such action represents a significant step toward compliance, additional corrective actions are required by the Tribe.
6. The circumstances of the civil fine due under Settlement Agreement 08-24 are as follows:

- a. On December 15, 2008, the NIGC Chairman and the Chairman of the Omaha Tribe entered into Settlement Agreement (SA-08-24) to settle an NOV for a late audit (NOV-08-24).
- b. Paragraph 12 of SA-08-24 states that twenty thousand dollars (\$20,000) of the civil fine would be suspended if the Tribe submitted quarterly fee statements and payments for its gaming operations by the regulatory deadlines of December 31, 2008, and March 31, 2009. Further, the \$20,000 would become payable within 30 days of missing either deadline.
- c. The Tribe met the December 31, 2008 deadline, but did not submit quarterly fee statements and payments by March 31, 2009. It submitted the fee payment for Casino Omaha on April 3, 2009, and failed to submit the required quarterly statement. Further, the Tribe did not submit a quarterly statement for its Lucky 77 gaming operation until April 23, 2009.
- d. Because the Tribe failed to meet the conditions for its civil fine suspension under SA-08-24, a twenty thousand dollar (\$20,000) civil fine is now due.

### III. Obligations of the Tribe

1. As a condition of settlement of the stipulated notice of violation and forgiveness of the \$20,000 civil fine due under SA 08-24, the Tribe agrees that it will not re-open the gaming facility formerly known as Casino Omaha ("Iowa Facility" or "Iowa Gaming Facility") until the following conditions have been met:
  - a. At least 60 days prior to re-opening the Iowa Gaming Facility, the Tribe, through its tribal gaming commission, must submit to the NIGC its approved tribal internal control standards ("TICS") that satisfy 25 C.F.R. § 542.3(c)(1), (2) and (3) and 25 C.F.R. § 543.3(c)(1) and (2), as applicable.
  - b. Additionally, at least 60 days prior to re-opening the Iowa Gaming Facility, management of the Iowa Facility shall also submit its written system of internal controls, required by 25 C.F.R. § 542.3(d) and 25 C.F.R. § 543.3(d). This internal control system should, at a minimum, include: 1) an organizational chart depicting segregation of functions and responsibilities; 2) a detailed narrative description of the

administrative and accounting procedures designed to satisfy the requirements of the tribal internal control standards; and 3) a written statement signed by the Iowa Gaming Facility's chief financial officer, general manager, or comparable position attesting that the organization's internal controls satisfy the requirements of the tribal internal control standards adopted by the tribal gaming regulatory authority. The parties acknowledge that the requirements specified in this paragraph (b) are minimum requirements for purposes of this Agreement only.

- c. Within 30 days of receipt of the TICS and internal control system specified in paragraphs (a) and (b) above, the NIGC Audit Division will review the submission and provide a written response to the Tribe and Iowa Gaming Facility management. The response will either approve the submission or note the sections of the submission that do not comply with NIGC regulations. If the Audit Division notes compliance exceptions that pose an unacceptable risk to the Iowa Gaming Facility's operational integrity, the Tribe must remedy (or cause to be remedied) the exception(s) prior to opening. The Tribe agrees that it will not re-open the Iowa Gaming Facility until it has received written confirmation from the NIGC that the exception(s) were remedied. Less significant exceptions shall require the Tribe to demonstrate correction within 60 days of receipt of the Audit Division's review. If the deficiencies remain after the 60-day correction period, the NIGC Chairman may reinstate all or any portion of the \$20,000 fine due under SA-08-24; assess additional civil fines or penalties for the stipulated violation(s); and/or direct the Tribe to close the affected gaming facility or facilities with a specified re-opening date. The Tribe agrees that these remedies do not restrict the NIGC Chairman from issuing new notices of violations and other enforcement actions for new violations of IGRA, NIGC regulations, and/or the Tribe's gaming ordinance.
- d. The Tribe agrees that the minimum bankroll formula, required by 25 C.F.R. § 542.14(d)(3), must be approved in writing by the NIGC Chairman or his designee prior to re-opening. The Tribe agrees that it will maintain this bankroll formula for the Iowa Gaming Facility for the duration of the probationary period set forth in this Agreement, unless it receives written approval from the NIGC Chairman or his designee of a modified formula.
- e. During the probation period, if at any time the Tribe does not have approved TICS that are at least as stringent as the MICS in 25 C.F.R. §§

542 and 543 ("NIGC MICS"), the Tribe agrees that the NIGC MICS will govern the Iowa Gaming Facility until it adopts MICS that meet or exceed NIGC standards.

- f. Prior to re-opening the Iowa Gaming Facility, the Tribe will (1) prepare an outline of its intended uses of net gaming revenue that complies with IGRA, as discussed in NIGC Bulletin 01-05; (2) approve the outline by duly adopted resolution of the Omaha Tribal Council ("Council"); and (3) provide the NIGC Chairman a copy of the resolution and outline. In the event that the NIGC Chairman or his designee determines that the outline and/or the Council resolution do not comply with IGRA, then the Tribe shall revise the outline and/or repeal and enact a new resolution within thirty (30) days following the date the NIGC Chairman or his designee provides written notice of such noncompliance. The Tribe agrees to comply with this tribal resolution for the duration of the probationary period set forth in this Agreement, with the exception that if the Tribe obtains approval of a Revenue Allocation Plan, as defined in 25 U.S.C. § 2710(b)(3), from the Secretary of the Department of the Interior, it will follow the Revenue Allocation Plan.
- g. Prior to re-opening the Iowa Gaming Facility, the Tribe and casino management will draft a cash management policy for the operation and submit it to NIGC for review and comment. For purposes of this Agreement, a cash management policy is a plan for utilizing cash in a manner that is consistent with the needs and strategic goals of the operation, including funding ongoing operational expenses and saving for projected capital expenditures of the Iowa Gaming Facility.
- h. Prior to re-opening the Iowa Gaming Facility, it must achieve satisfactory results in an Environmental Public Health and Safety ("EPHS") review by NIGC field staff. If the review is not satisfactory, NIGC staff will detail in writing within seven days of the visit the corrective actions required. NIGC will review the corrective actions and confirm in writing that they are sufficient. The Tribe agrees that it will not re-open until it receives NIGC written confirmation that the Tribe remedied the EPHS issues.
- i. Prior to re-opening the Iowa Gaming Facility, the Tribe will provide to the NIGC Chairman a copy of the executed letter of engagement with a certified public accounting firm to conduct the audit of the Facility's financial statements and Agreed Upon Procedures Report for the year ending September 30, 2009.

2. As an additional condition of settlement of the stipulated notice of violation and forgiveness of the \$20,000 civil fine due under SA 08-24, the Tribe agrees to the following provisions for a five year probationary period:
  - a. The NIGC will review the Tribe's operation and regulation of its gaming facilities at periodic intervals for a probationary period of five years for the purpose of determining that the Tribe, in the operation and regulation of its gaming operations, is in material compliance with IGRA; NIGC regulations, including 25 C.F.R. §§ 542 and 543; the Tribe's gaming ordinances; and this Agreement.
  - b. The five-year probationary period begins on the date the Iowa Gaming Facility re-opens (the "Re-Opening").
  - c. The Tribe agrees to conduct and regulate gaming operations at each authorized gaming facility in material compliance with the provisions of this Agreement, the IGRA – including the use of revenues requirements contained in 25 U.S.C. §2710(b)(2)(B), NIGC regulations – including 25 C.F.R. §§ 542 and 543, the Tribe's gaming ordinances and gaming regulations, and the TICS (or the NIGC MICS if TICS have not been approved).
  - d. In the event that management of the authorized Facility, the Tribal Gaming Commission, or the Tribe determines that gaming operations at the Facility are being conducted or regulated in material violation of any provisions of the IGRA, NIGC regulations, the Tribal gaming ordinance or gaming regulations, the TICS, or this Agreement, the Tribe will promptly notify the NIGC Region Office in St. Paul, Minnesota of the violation(s) and take immediate steps to correct the violation(s).
  - e. In the event the NIGC Chairman or his designee determines that any self-reported violation(s), described in paragraph 2(d) above, has not been timely corrected or determines that there are other violations, then the NIGC Chairman shall provide the Tribe a letter describing the violation(s) and setting forth a reasonable time period to correct the violation(s), which for purposes of this Agreement, the parties agree will be at least 30 days following the date of the Chairman's letter, unless otherwise agreed or unless the violation is a "substantial violation" as that term is used in 25 C.F.R. § 573.6, in which case the NIGC Chairman or his designee may establish a shorter period.

- f. The Tribe agrees that the NIGC may conduct unannounced audits of the books and records of the Tribe's Class II and Class III gaming facilities and review and observe the facilities.
- g. Within nine months following the Re-Opening, the Tribe agrees that the NIGC will conduct a MICS compliance audit of both Class II and Class III gaming for the Iowa Gaming Facility. NIGC intends the audit primarily as a training tool for the Tribe. Unless there is an immediate and material risk to the interest of the public, the NIGC Chairman agrees to allow the Tribe six months to correct any exceptions, and may, at its option, conduct follow-up audits at any time during or subsequent to the correction period. The Tribe further agrees that it will correct all exceptions found in the audit. If significant issues remain uncorrected, the NIGC may extend the time period for correction, order the gaming facility to close until a pre-determined date or order the gaming facility to close and follow the re-opening procedure described in section IV, paragraphs 1-3 of this Agreement. The Tribe agrees to close the Iowa Gaming Facility if ordered to do so by the NIGC Chairman pursuant to the preceding sentence.
- h. The Tribe agrees that failure to follow the minimum bankroll formula--established pursuant to 25 C.F.R. § 542.14(d)(3) and paragraph (1)(d) of this section--poses an immediate and material risk to the interest of the public and could result in a closure order by the NIGC Chairman without allowing a time period for correction. If the Chairman allows a correction period, it will be subject to paragraph (2)(j) of this section.
- i. The NIGC will monitor the Tribe's allocation of net gaming revenues to ensure that such allocation complies with IGRA, the Council resolution referenced in (1)(f) of this section, and/or any revenue allocation plan adopted by the Tribe that is approved by the Secretary of the U.S. Department of the Interior. The Tribe will provide the NIGC with annual statements reflecting its allocation of all net gaming revenues. In addition, the Tribe shall provide NIGC access to all relevant records to enable the NIGC to monitor its allocation and/or distribution of net gaming revenues. In the event that the NIGC Chairman determines that the Tribe's allocation of net gaming revenue is inconsistent with IGRA, the Council resolution, and/or any approved revenue allocation plan, then the Tribe shall be given 30 days from the date NIGC notifies the Tribe to create a plan to correct such violations. The Tribe will then be allowed up to one year or the



timeframe set forth in the plan to fully implement the corrective actions.

- j. Following the review and a period to correct the violations referred to in paragraphs 2(d), (e), (h), and (i), the Tribe agrees that if the NIGC Chairman determines that the gaming facility is not then operated in compliance with IGRA, NIGC regulations, the Tribe's gaming ordinance, and/or this Agreement, the NIGC Chairman may reinstate the \$20,000 fine due under SA-08-24; assess additional civil fines or penalties for the stipulated violation(s); and/or direct the Tribe to close the affected gaming facility or facilities. The Tribe agrees that it will close the affected facility or facilities at issue pursuant to the preceding sentence within 10 calendar days of receiving written notice to do so from the NIGC Chairman or his designee. Unless the Chairman or his designee specify a re-opening date for the facility and/or facilities in the letter describing the violations, described in paragraph 2(e), to re-open these facilities, the Tribe must follow the procedure described in section IV, paragraphs 1-3 of this Agreement. The Tribe agrees that these remedies do not restrict the NIGC Chairman from issuing new notices of violations and other enforcement actions for new violations of IGRA, NIGC regulations, and/or the Tribe's gaming ordinance.
- k. The Tribe shall safeguard the independence of its Tribal Gaming Commission by shielding it from improper influence of its legitimate exercise of authority or its ability to lawfully discharge its powers, duties, and responsibilities in accordance with the Tribe's gaming ordinance and regulations, provided that nothing in this Agreement shall be construed to prevent the Tribe from removing any member of its gaming commission in accordance with the Tribe's gaming ordinance.
- l. In accordance with 25 C.F.R. § 571.12, the Tribe agrees to submit the gaming operations' audited financial statements and Agreed Upon Procedures Report for the fiscal year ending September 30, 2009 by January 28, 2010.
- m. In accordance with 25 C. F. R. part 514, the Tribe shall submit statements and any required fee payments by the regulatory due dates set forth in the NIGC regulations.
- n. The Tribe agrees that all Key Employees and Primary Management Officials will be licensed as required by the NIGC regulations and its gaming ordinance.

- o. The Tribe agrees to provide internal control standard training for all employees who are directly involved in the conduct of the games or the support thereof (*i.e.*, surveillance, cage, drop and count, dealers, internal audit, etc.). The Tribe will submit documentation of the training sessions and attendees' names and titles to the NIGC within 60 days after opening.
- p. The Tribe further agrees to maintain the level of competency among its staff by providing internal controls training within six months of hiring new employees into gaming-related positions. The Tribe will send documentation of the training and attendees to NIGC within 30 days after each training session occurs.
- q. The five year probationary period will be tolled for the duration of any closure of any of the Tribe's gaming facilities.

#### IV. Re-opening

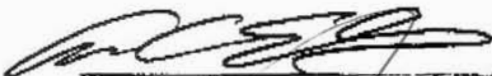
1. The Tribe agrees that it will only re-open and recommence gaming at the Iowa Gaming Facility upon the NIGC Chairman's written authorization.
2. The NIGC Chairman's authorization to re-open and recommence gaming at the Iowa Gaming Facility, referenced in paragraph 1 of this section, is exclusively limited to a letter issued by the NIGC Chairman or an authorized designee (the "NIGC Letter") stating that the Tribe has fully complied with this Agreement or corrected any violation described in Section III(2) of this Agreement during the probationary period. The Tribe may not presume agreement in the absence of the NIGC Letter. The parties agree that the NIGC Chairman shall have sole discretion to determine whether the Tribe has met the requirements of this Agreement or adequately remedied any violation described in Section III(2) of this Agreement during the probationary period.
3. The NIGC Chairman agrees that he will issue the NIGC Letter within 30 days of the date that the Tribe provides evidence reasonably demonstrating that it has satisfied Section III of this Agreement. If the evidence provided by the Tribe does not demonstrate satisfactory compliance with Section III, the NIGC Chairman or his designee will provide written notice of the deficiencies. Once the Tribe has corrected the deficiencies, it may submit additional documentation to the NIGC

Chairman or his designee showing that it has satisfied this Agreement. The NIGC Chairman or his designee will then review the additional evidence. Once the Tribe has demonstrated that it has satisfied Section III, the Chairman will issue the letter referenced in paragraph 2 of this section.

V. Additional Covenants

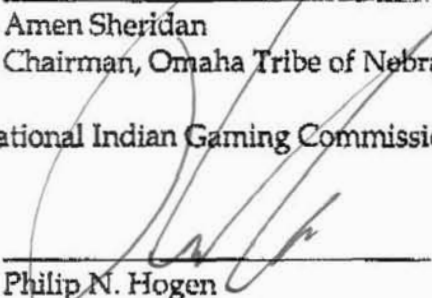
1. The parties agree that after the effective date, this Agreement shall be a public document and may be published or disclosed by either party.
2. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purposes of this Agreement.
3. This Agreement constitutes the entire agreement between the NIGC Chairman and the Tribe. No warranties, representations, covenants, or agreements shall be binding upon any party except as set forth herein. Any modification or waiver of any term of this Agreement, including the modification or waiver of term, must be in writing and signed by all the parties.

For the Omaha Tribe of Nebraska

By:   
Amen Sheridan  
Chairman, Omaha Tribe of Nebraska

Date: 20-1-09

For the National Indian Gaming Commission:

By:   
Philip N. Hogen  
Chairman, National Indian Gaming Commission

Date: 10/2/09