

**NATIONAL
INDIAN
GAMING
COMMISSION**

DEC 3 1996

Hubert Markishtum
Chairman
Makah Indian Tribe
P.O. Box 115
Neah Bay, WA 98357

Dear Chairman Markishtum:

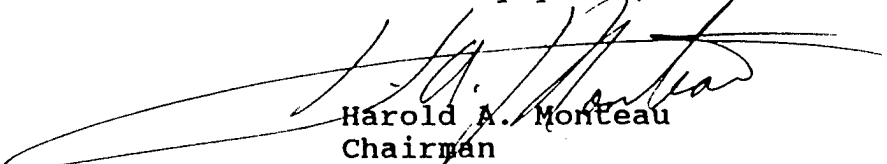
This letter responds to your request to review and approve the tribal gaming ordinance, Resolution No. 98-96A, adopted on April 17, 1996, by the Makah Indian Tribe (Tribe). This letter constitutes approval of the Tribe's ordinance under 25 C.F.R. § 522.9.

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. The Chairman has ninety (90) days in which to approve or disapprove a tribal ordinance. If the ninety (90) day period expires without the Chairman acting on the ordinance, the ordinance is considered to have been approved by the Chairman to the extent that the ordinance complies with the IGRA and the NIGC regulations. 25 C.F.R. § 522.9. Therefore, since the ninety day period expired on November 12, 1996, the Tribe's ordinance is considered approved "but only to the extent that such an ordinance or resolution is consistent with the provisions of the Act and this chapter." 25 C.F.R. § 522.9.

With the approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. In addition, the NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

Thank you for submitting the ordinance of the Makah Indian Tribe for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA. If you have questions or require further assistance, please contact Jessica Roff at (202) 632-7003.

Sincerely yours,



Harold A. Monteau
Chairman

Resolution No.: 99-96A

Date Enacted: April 17, 1996

Subject: Approval of Gaming
Regulations

RESOLUTION NO. 99-96A OF THE MAKAH TRIBAL COUNCIL

WHEREAS, the Makah Tribal Council is the governing body of the Makah Indian Tribe of the Makah Indian Reservation, Washington by authority of the Constitution and By-Laws of the Makah Indian Tribe as approved on May 16, 1936 by the Secretary of the Interior; and

WHEREAS, Article VI of the Constitution and By-Laws of the Makah Tribe empowers the Tribal Council to protect the health, security and general welfare of the Tribe and its members, to regulate the conduct of trade, to enact ordinances and to manage the affairs of the Tribe; and

WHEREAS, by Resolution No. 98-96A enacted April 17, 1996, the Makah Tribal Council enacted a Class II Gaming Code; and

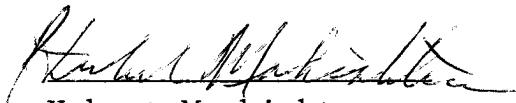
WHEREAS, regulations are necessary to implement the gaming code, including restrictions on authorized games, patron disputes, and background checks and licensing procedures for Class II key employees and primary management officials.

THEREFORE, BE IT RESOLVED, that the Makah Tribal Council hereby approves and adopts the Regulations to Implement the Gaming Code of the Makah Indian Tribe in the form attached hereto; and

BE IT FURTHER RESOLVED, that all prior gaming regulations of the Tribe, to the extent that they are inconsistent with these resolutions, are hereby repealed; and

BE IT FURTHER RESOLVED, that this Resolution shall remain in effect until rescinded or superseded by further action of the Makah Tribal Council.


MAKAH TRIBAL COUNCIL



Hubert Markishtum
Chairman

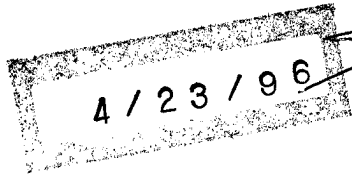
CERTIFICATION

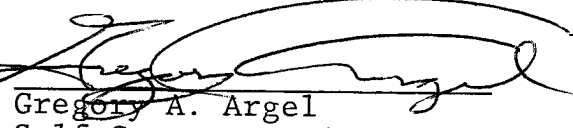
The foregoing Resolution was adopted at a Special Meeting held on April 17, 1996, at which a quorum was present, and the Resolution was adopted by a vote of 4 FOR and 0 AGAINST, the Chairman or the Vice-Chairman in his absence being authorized to sign the Resolution.


JoDean Haupt Richards
Tribal Secretary

APPROVED: Pursuant to authority delegated by the Portland Area Director by memorandum dated 7/25/95 and as provided in 10 BIAM Bulletin No. 9301.

BUREAU OF INDIAN AFFAIRS


4 / 23 / 96


Gregory A. Argel
Self-Governance Specialist
Makah Agency

Resolution No.: 100-96A

Date Enacted: April 17, 1996

Subject: Submission of Gaming
Code and Regulations of Approval

RESOLUTION NO. 100-96A OF THE MAKAH TRIBAL COUNCIL

WHEREAS, the Makah Tribal Council is the governing body of the Makah Indian Tribe of the Makah Indian Reservation, Washington, by authority of the Constitution and By-Laws of the Makah Indian Tribe as approved on May 16, 1936, by the Secretary of the Interior; and

WHEREAS, Article VI of the Constitution and By-Laws of the Makah Tribe empowers the Tribal Council to protect the health, security and general welfare of the Tribe and its members, to regulate the conduct of trade, to enact ordinances and to manage the affairs of the Tribe; and

WHEREAS, by Resolution No. 98-96A, dated April 17, 1996, the Makah Tribal Council enacted a Class II Gaming Code; and

WHEREAS, by Resolution No. 99-96A, dated April 17, 1996, the Makah Tribal Council approved Regulations to Implement the Gaming Code of the Makah Indian Tribe; and

WHEREAS, Article VI, Section 1(i) of the Constitution and By-Laws of the Makah Indian Tribe requires that ordinances governing the conduct of its members and providing for law and order on the Reservation are subject to review by the Secretary of the Interior; and

WHEREAS, the Indian Gaming Regulatory Act of 1988 (102 Stat. 2467), as amended, requires that tribal gaming codes be approved by the Chairman of the National Indian Gaming Commission and that regulations promulgated pursuant to such gaming codes be submitted to the Chairman along with any tribally enacted code.


NOW, THEREFORE, BE IT RESOLVED, that the Makah Tribal Council hereby directs the Chairman, or the Vice-Chairman in his absence to submit the duly-enacted Gaming Code of the Makah Indian Tribe and the regulations to implement the Gaming Code of the Makah Indian Tribe to the Secretary of the Interior for his approval pursuant to Article VI, Section 1(i) of the Constitution and By-Laws of the Makah Indian Tribe; and

BE IT FURTHER RESOLVED, that the Makah Tribal Council hereby directs the Chairman, or the Vice-Chairman in his absence, to

submit the duly-enacted Gaming Code of the Makah Indian Tribe and Regulations to Implement the Gaming Code of the Makah Indian Tribe to the Chairman of the National Indian Gaming Commission for approval and asks the Chairman to issue his approval as soon as possible.


BE IT FURTHER RESOLVED, that this Resolution shall remain in effect until rescinded or suprased by further action of the Makah Tribal Council.

MAKAH TRIBAL COUNCIL


Hubert Markishtum
Chairman

CERTIFICATION

The foregoing Resolution was adopted at a Special Meeting held on April 17, 1996, at which a quorum was present, and the Resolution was adopted by a vote of 4 FOR and 0 against, the Chairman or the Vice-Chairman in his absence being authorized to sign the Resolution.


JoDean Haupt Richards
Tribal Secretary

APPROVED:

BUREAU OF INDIAN AFFAIRS



Gregory A. Argel
Self-Governance Specialist
Makah Agency

4 / 23 / 96

Resolution No. 101-96A

Date Enacted: April 17, 1996

Subject: Designation of Agency

RESOLUTION NO. 101-96A OF THE MAKAH TRIBAL COUNCIL

WHEREAS, the Makah Tribal Council is the governing body of the Makah Indian Tribe of the Makah Indian Reservation, Washington, by authority of the Constitution and By-Laws of the Makah Indian Tribe as approved on May 16, 1936 by the Secretary of the Interior; and

WHEREAS, Article VI of the Constitution and By-Laws of the Makah Tribe empowers the Tribal Council to protect the health, security and general welfare of the Tribe and its members, to regulate the conduct of trade, to enact ordinances and to manage the affairs of the Tribe; and

WHEREAS, by Resolution No. 100-96A dated April 17, 1996, the Makah Tribal Council directed the Chairman, or the Vice-Chairman in his absence, to submit the Gaming Code of the Makah Indian Tribe to the Chairman of the National Indian Gaming Commission for approval under federal law; and


WHEREAS, regulations at 25 C.F.R. Section 522.2(h) require that as part of the submittal process the Tribe identify the law enforcement agency that will be responsible for taking Class II gaming license applicant's fingerprints and send them directly to the National Indian Gaming Commission, to be forwarded to the Federal Bureau of Investigations, National Criminal Information Center for a criminal records search; and

WHEREAS, the Makah Tribal Police is available and has agreed to provide fingerprinting services to the Tribe for the purpose of licensing Class II gaming employees and management officials.

THEREFORE, BE IT RESOLVED, that the Makah Tribal Council hereby designates the Makah Tribal Police as the law enforcement agency that will take Class II gaming license applicant's fingerprints and send them directly to the National Indian Gaming Commission to be forwarded to the Federal Bureau of Investigation, criminal records search.

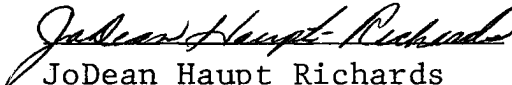
BE IT FURTHER RESOLVED, that this Resolution shall remain in effect until rescinded or superseded by further action of the Makah Tribal Council.

MAKAH TRIBAL COUNCIL


Hubert Markishtum
Chairman


CERTIFICATION

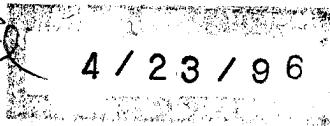
The foregoing Resolution was adopted at a Special Meeting held on April 17, 1996, at which a quorum was present, and the Resolution was adopted by a vote of 4 FOR and 0 AGAINST, the Chairman or the Vice-Chairman in his absence being authorized to sign the Resolution.


JoDean Haupt Richards
Tribal Secretary

APPROVED:

BUREAU OF INDIAN AFFAIRS


Gregory A. Argel
Self-Governance Specialist
Makah Agency


4 / 23 / 96

Resolution No.: 102-96A

Date Enacted: April 17, 1996

Subject: Designation of Agent
for Gaming Notice

RESOLUTION NO. 102-96A OF THE MAKAH TRIBAL COUNCIL

WHEREAS, the Makah Tribal Council is the governing body of the Makah Indian Tribe of the Makah Indian Reservation, Washington, by authority of the Constitution and By-Laws of the Makah Indian as approved on May 16, 1936 by the Secretary of the Interior; and

WHEREAS, Article VI of the Constitution and By-Laws of the Makah Tribe empowers the Tribal Council to protect the health, security and general welfare of the Tribe and its members, to regulate the conduct of trade, to enact ordinances and to manage the affairs of the Tribe; and

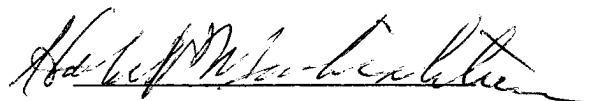
WHEREAS, the Makah Indian Tribe desires to engage in Class II gaming activities authorized by the Indian Gaming Regulatory Act of 1988 (102 Stat. 2467), as amended; and

WHEREAS, regulations promulgated under the Act require that the Tribe designate a tribal agent for service by the National Indian Gaming Commission.

THEREFORE, BE IT RESOLVED, that the Makah Tribal Council hereby designates the Chairman of the Makah Indian Tribe as the registered agent of the Tribe for purposes of 25 C.F.R. Section 519.1 and designates the Office of the Chairman, Makah Tribal Council, P.O. Box 115, Neah Bay, Washington 98357, as the mailing address of the registered agent; and

BE IT FURTHER RESOLVED, that this Resolution shall remain in effect until rescinded or superseded by further action of the Makah Tribal Council.


MAKAH TRIBAL COUNCIL



Hubert Markishtum
Chairman


CERTIFICATION

The foregoing Resolution was adopted at a Special Meeting held on April 17, 1996, at which a quorum was present, and the Resolution was adopted by a vote of 4 FOR and 0 AGAINST, the Chairman or the Vice-Chairman in his absence being authorized to sign the Resolution.


JoDean Haupt Richards
Tribal Secretary

APPROVED:

BUREAU OF INDIAN AFFAIRS


Gregory A. Argel
Self-Governance Specialist 4 / 23 / 96
Makah Agency

GAMING CODE

OF THE

MAKAH INDIAN TRIBE

Enacted April 17, 1996
Resolution No. 98-96A

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**GAMING CODE
OF THE
MAKAH INDIAN TRIBE**

A law to authorize, license and regulate certain forms of gaming within the jurisdiction of the Makah Indian Tribe.

Section 1. Findings, Purposes and Policy.

1.1 Findings. The Makah Tribal Council on behalf of the Makah Tribe finds that:

1.1.1 Tribal regulation and control of gaming activity within the jurisdiction of the Makah Indian Tribe is essential for the protection of public health and welfare, and the interests of the Tribe and the residents of and visitors to the tribal community.

1.1.2 The Tribe has the legal authority to license and regulate all gaming activity not specifically prohibited by federal law, within the jurisdiction of the Tribe.

1.1.3 Properly licensed and regulated gaming activities conform with announced federal policy promoting Indian self-government and Indian tribal economic self-sufficiency.

1.1.4 It is essential that the Tribe, through its Tribal Council, regulate gaming in a manner commensurate with applicable federal and tribal law and policy.

1.1.5 The present needs of the Tribe include increased employment, job and skills training, housing, quality health care, improved nutrition, educational opportunities, social services, law and order, public safety and judiciary, and community and economic development; needs that are not adequately addressed by present tribal, federal and state programs.

1.1.6 Tribal operation and licensing of gaming activities on the Reservation are appropriate means of generating revenue to address the needs of the Tribe.

1.1.7 The Tribe is vigorously pursuing its goal of self-sufficiency and self-determination through the development of tribal businesses and enterprises. Because the Makah Indian Reservation lacks income-generating natural resources and because the Tribe's tax base is almost non-existent, the Tribe must rely on tribal business development to raise the funds necessary to expand its social, health, and education programs, increase employment and improve its on-reservation economy. This effort has recently become increasingly important as a result of cutbacks in federal and state funding and the increased costs of self-government. It is therefore essential that the Tribe develop new and expanded sources of revenue to support its ever-increasing governmental needs and to provide much needed employment and training for tribal members.

1.1.8 As a result, the adoption of this Code is in the best interest of the Makah Indian Tribe.

1.2 Purposes. The purposes of this Code are to:

1.2.1 Regulate, control, and license the operation of all gaming within the jurisdiction of the Tribe.

1.2.2 Make clear and explicit that a tribal license to operate a gaming activity is a revocable privilege, not a right or property interest.

1.2.3 Ensure that the operation of tribally regulated gaming will continue as a means of generating tribal revenue.

1.2.4 Ensure that tribally regulated gaming is conducted fairly and honestly by both gaming operators and players and that it remain free from corrupt, incompetent, unconscionable and dishonest persons and practices.

1.2.5 Promote and strengthen tribal economic development and self-determination and enhance employment opportunities for its members.

1.2.6 Generate revenue to strengthen and improve tribal self-government and the provision of tribal governmental services.

1.2.7 Ensure that all gaming revenue is used for the benefit of the Tribe and the Reservation community.

1.2.8 Ensure that tribal gaming laws are strictly and fairly enforced against all persons involved in gaming activities within the jurisdiction of the Tribe.

1.2.9 Ensure that the Tribe provide a fair and impartial forum for the resolution of gaming disputes.

1.3 Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of tribal self-government. Consistent with federal policy, tribal government provides a wide range of public services on the Reservation, including general governmental services, maintenance of peace and good order, establishment of educational systems and programs, and promotion and regulation of economic activities within the sovereign jurisdiction of the Tribe.

1.4 Tribal Gaming Policy. The establishment, promotion, and operation of gaming is necessary and desirable, provided that such gaming is regulated and controlled by the Tribe pursuant to tribal and federal law and any tribal-state gaming compact entered into pursuant to the Indian Gaming Regulatory Act, and that all proceeds of such gaming are used for the benefit of the Tribe as required by the Indian Gaming Regulatory Act and tribal law. When operated in accordance with the provisions of this Code, such gaming will be conducive to the general welfare of all residents of the Reservation.

Section 2. Definitions.

In this Code, except where otherwise specifically provided or where the context otherwise requires, the following terms and expressions shall have the following meanings:

2.1 "Applicant" means any person who has applied for a license under the provisions of this Code, or employment with a gaming facility operator, or approval of any act or transaction for which approval is required or permitted under the provisions of this Code.

2.2 "Application" means a request for the issuance of a license or for employment by a gaming facility operator, or for approval of any act or transaction for which approval is required or permitted under the provisions of this Code.

2.3 "Bingo" means the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) that is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of each card covers such numbers or designations when objects similarly numbered or designated are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip-jars, instant bingo, and other games similar to bingo.

2.4 "Cheating" means operating or playing in any game in a manner in violation of the written or commonly understood rules of the game, with the intent to create for oneself or someone in privity with one an advantage over and above the chance of the game.

2.5 "Code" means this Code, the Makah Gaming Code, as now or hereafter amended.

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

2.7 "Compensation" means all wages, salaries, bonuses, and all other forms of remuneration for services rendered.

2.8 "Council" or "Tribal Council" means the governing body of the Makah Indian Tribe.

2.9 "Distributor" means a person who distributes gaming devices and/or component parts thereof.

2.10 "Educational, charitable, patriotic, veteran's, fraternal, religious, civic, or public-spirited uses" are:

2.10.1 Uses benefiting an indefinite number of people by bringing them under the influence of educational or cultural programs.

2.10.2 Uses otherwise lessening the burden of tribal government.

2.10.3 Uses benefiting one or more persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense that is uncompensated by insurance.

2.10.4 Uses for community service projects that promote the common good, enhance the social and economic welfare of the community, and benefit an indefinite number of people.

2.11 "Eligible organization" means any nonprofit organization operated for educational, charitable, patriotic, veteran's, fraternal, religious, civic, or public-spirited uses, or for the relief of poverty, distress, or other condition on the Makah Indian Reservation.

2.12 "Enrolled Tribal Member" means a person who has been enrolled in the Makah Indian Tribe and whose name appears in the tribal membership roll and who meets the written criteria for membership.

2.13 "Game" or "game of chance" means any activity which falls within the broad definition of gaming or gaming activity.

2.14 "Gaming" means an activity in which valuable consideration is wagered upon the outcome determined in whole or in part by chance, skill, speed, strength, or endurance or any combination of strength or endurance, and in which something of value is awarded to a person or persons so wagering.

2.15 "Gaming activity" means all forms of Class II gaming owned and operated by the Tribe and conducted within the Indian lands of the Tribe, and any activity in furtherance thereof, including owning, financing, managing, participating in, conducting, or assisting in any way in any such activity at the site where gaming is conducted, directly or indirectly, whether at the site in person or off-site.

2.16 "Gaming apparatus" or "gaming equipment" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gaming activity, whether or not specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of any gaming facility.

2.17 "Gaming device" or "electronic game of chance" means a microprocessor-controlled electronic device which allows a player to play games of chance, some of which are affected by skill, which device is activated by the insertion of a coin, currency, tokens or by the use of a credit, and which awards game credits, cash, tokens, replays or a receipt that can be redeemed by the player for any of the foregoing. Game play may be displayed by:

2.17.1 Video facsimile; or

2.17.2 Mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence, or lack thereof, of a winning combination and pay out, if any.

2.18 "Gaming employee" means any natural person employed or contracted as a primary management official or key employee of a gaming operation of the Tribe and any person employed or contracted in the operation or management of a gaming operation, including, but not limited to, any person whose employment or contractual duties require or authorize access to restricted areas of a gaming facility not otherwise open to the public.

2.19 "Gaming facility" means the buildings or structures in which gaming or gaming activities are conducted or operated.

2.20 "Gaming facility operator" means the Tribe, an enterprise owned by the Tribe, or such other entity of the Tribe as the Tribe may from time to time designate as the wholly-owned tribal entity having full authority and responsibility for the operation and management of Class II gaming activities and a person who is otherwise permitted by this Code to perform, promote, conduct or operate a gaming activity on Indian lands under this Code.

2.21 "Gaming services" means the providing of any goods or services, except for legal services, to the Tribe in connection with the operation of gaming activities in a gaming facility, including but not limited to equipment, transportation, food, linens, janitorial supplies, maintenance, or security services for the gaming facility, in an amount in excess of \$10,000 in any single month.

2.22 "Gaming ticket" means any game piece used in the play of a paper pull tab game, or jar ticket game, or raffle.

2.23 "Gross revenues" means any money collected or received from any gaming activity.

2.24 "Immediate Family" means, with respect to the person under consideration, a husband, wife, father, mother, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

2.25 "Indian Gaming Regulatory Act" or "IGRA" means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168, as amended.

2.26 "Indian lands" means:

2.26.1 all lands within the limits of the Makah Indian Reservation; and

2.26.2 all lands title to which is either held in trust by the United States for the benefit of the Tribe or individual member of the Tribe or held by the Tribe or individual member of the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental powers; and

2.26.3 all lands within the State of Washington that may be acquired by the Tribe and that meet the requirements of section 20 of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2719.

2.27 "Interactive terminal" or "video lottery terminal" means on-line computer or data-processing terminal capable of providing a source of both input and video display output for the computer system to which it is connected, in which a player is playing against the algorithm of the terminal so that the player is playing directly against the terminal for immediate payment and is immediately rewarded or penalized based on the outcome, and which dispenses a paper receipt which can be redeemed by the player for the player's winnings.

2.28 "IRS" means the United States Internal Revenue Service.

2.29 "Keno" means a house banking game in which a player selects from one to twenty numbers on a card that contains the numbers one through eighty; the house randomly draws twenty numbers; players win if the numbers they select correspond to the numbers drawn by the house, and the house pays all winners, if any, and collects from all losers.

2.30 "Key employee" means:

2.30.1 A gaming employee under this Code and who performs one or more of the following functions:

2.30.1.1 Bingo caller;

2.30.1.2 Counting room supervisor;

2.30.1.3 Chief of security;

2.30.1.4 Custodian of gaming supplies or cash;

2.30.1.5 Floor manager;

2.30.1.6 Pit boss;

2.30.1.7 Dealer;

2.30.1.8 Croupier;

2.30.1.9 Approver of credit;

2.30.1.10 Custodian of gambling devices including persons with access to cash and accounting records within such devices.

2.30.2 If not otherwise included:

2.30.2.1 a person with access to gaming finance or accounting offices;
or

2.30.2.2 a person authorized to make on-site repairs, adjustments or alterations to any piece of gaming equipment; or

2.30.2.3 a person whose total cash compensation derived from a gaming activity subject to this Code is in excess of \$50,000 per year; or

2.30.2.4 the four most highly compensated persons in any gaming activity subject to this Code; or

2.30.2.5 an employee whom the Tribal Gaming Commission may by written notice classify as a key employee.

2.31 "License" means a revocable approval granted by the Tribal Gaming Commission pursuant to this Code to an applicant to be involved in a gaming activity or in providing gaming services pursuant to this Code.

2.32 "Licensee" means any natural person or entity who has a license.

2.33 "Lotto" is the generic name for a type of on-line lottery game operated by the State of Washington in which a player selects a group of numbers from a larger field of numbers and wins

by matching specific numbers subsequently drawn.

2.34 "Management contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

2.35 "Management contractor" means a natural person or entity that has entered into a management contract with the Tribe or a gaming facility operator which has been approved pursuant to 25 U.S.C. §§ 2710(d)(9) and 2711.

2.36 "Manufacturer" means a natural person or entity that manufactures gaming devices and/or component parts thereof for use or play in the gaming facilities.

2.37 "Net revenues" means gross revenues less amounts paid out as, or paid for, prizes; and less total gaming-related operating expenses, excluding management fees.

2.38 "Participate" in any gaming activity means to operate, direct, finance, or in any way assist in the establishment or operation of any gaming activity or any site where gaming is conducted, directly or indirectly, whether at the site in person or off-site.

2.39 "Person" means any individual, partnership, joint venture, corporation, joint stock company, company, firm, association, trust, estate, club, business trust, municipal corporation, society, receiver, assignee, trustee in bankruptcy, political entity, and any owner, director, officer, or employee of any such entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, the government of the Tribe, any governmental entity of the Tribe, or any of the above listed forms of business entities that are wholly owned or operated by the Tribe; provided, however, that the term does not include the federal government or any agency thereof.

2.40 "Player" means a person participating in any game, but does not include a gaming operator.

2.41 "Player activated lottery terminal" means an on-line computer system that is player-activated, but does not provide the player with interactive gaming, and utilizes the terminal for dispensing purposes only in which (i) the terminal algorithm is used for the random generation of numbers, (ii) the tickets dispensed by the terminal do not allow the player the means to play directly against the terminal, (iii) the player uses the dispensed ticket to participate in an off-site random drawing, and (iv) the player's ability to play against the terminal for immediate payment or reward is eliminated.

2.42 "Primary management official" means

2.42.1 The person having management responsibility under a management contract approved by the National Indian Gaming Commission; or

2.42.2 Any person who has authority:

2.42.2.1 To hire and fire gaming employees; or

2.42.2.2 To set up working policy for a gaming operation; or

2.42.3 The chief financial officer or other person who has financial management

responsibility for a gaming operation.

2.43 "Principal" means with respect to any person:

2.43.1 Each of its officers and directors;

2.43.2 Each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer or general management;

2.43.3 Each of its owners or partners, if an unincorporated business;

2.43.4 Each of its shareholders who own more than ten (10) percent of the shares of the corporation, if a corporation;

2.43.5 Each person other than a banking institution who has provided financing for the entity constituting more than ten (10) percent of the total financing of the entity; and

2.43.6 Each of the beneficiaries, or trustees of a trust.

2.44 "Progressive gaming" means any game in which a cash prize not being won by any player during any game is retained and further monetarily enhanced by the gaming operator or eligible organization, and offered as a prize to players in the next game.

2.45 "Pull-tabs, punchboards, and tip jars" means any disposable card, board, ticket, or display which accords the player an opportunity to win something of value by opening, pulling, detaching, or otherwise removing or uncovering tabs or covers from the card, board, ticket, or display to reveal a set of numbers, letters, symbols, configurations, or combinations thereof which have been previously specified as a winning combination.

2.46 "Raffle" means any gaming in which each player buys a ticket for a chance to win a prize, with the winner determined by a random method. "Raffle" does not include slot machines or gaming devices or electronic games of chance.

2.47 "Reservation" and "Makah Indian Reservation" means the Reservation established pursuant to the Treaty of January 31, 1855, and all other lands added thereto by executive order, act of Congress, or otherwise under federal law, notwithstanding the issuance of any patent and including rights-of-way running through such lands.

2.48 "State" means the State of Washington.

2.49 "Tribe" means and "tribal" refers to the Makah Indian Tribe, a federally recognized Indian tribe acting through the duly elected Tribal Council pursuant to the tribal constitution and bylaws, unless the context clearly indicates a general meaning. The term shall also include all authorized officials, agents and representatives of the Tribe.

2.50 "Tribal Gaming Commission" means the Makah Tribal Gaming Commission established under Section 4 of this Code, that exercises all regulatory authority of the Tribe over gaming activities on Indian lands.

2.51 "Tribal police department" means the police force of the Makah Tribe established and maintained, contracted for, or otherwise provided by the Tribe pursuant to the Tribe's powers of self-

government to carry out law enforcement on Indian lands.

2.52 "Wager" means the bet made or consideration or value given by a player in any game.

Section 3. General Provisions.

3.1 Authority and Sovereign Powers and Responsibilities. This Code is enacted pursuant to the inherent sovereign powers of the Tribe and the powers expressly delegated to the Tribal Council by Article VI of the Tribal Constitution.

3.2 Application of Federal Policy. In 1970 President Nixon announced the policy of the United States government to promote self-determination for Indian tribes. At the heart of this policy is a commitment by the federal government to foster and encourage tribal self-government, economic development, and self-sufficiency. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act, Public Law 93-638, 88 Stat. 2203, 25 U.S.C. §§450-450n. In 1983 President Reagan reaffirmed that commitment in his Indian policy statement, encouraged tribes to reduce their dependence on federal funds by generating more of their own revenues, and pledged to assist tribes in that endeavor.

In 1988 the federal commitment to promote tribal economic development, tribal self-sufficiency, and strong tribal government was expressly legislated in the Indian Gaming Regulatory Act ("IGRA"), Public Law 100-497, 102 Stat. 2426, 25 U.S.C. §§ 2701-2721 (1988), which recognized the inherent sovereign right of tribes to operate and their exclusive right to regulate on Indian lands gaming which is not specifically prohibited by federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming, and provided a federal statutory basis for operation and regulation of Indian gaming.

3.3 Makah Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of tribal self-government. Consistent with federal policy, tribal government provides a wide range of public services on the Reservation, including general governmental services, the maintenance of peace and good order, the establishment of educational systems and programs, and the promotion and regulation of economic activities within the sovereign jurisdiction of the Tribe.

3.4 Title, Repeal of Prior Laws, and Effect of Repeal. This Code may be cited as the Makah Gaming Code. The Code shall be appropriately inserted in the Makah Tribal Code.

All ordinances of the Tribe and all titles, chapters, and sections of the Tribal Code that pertain to gaming and are in effect as of the effective date of this Code are hereby repealed, and all other tribal laws or parts thereof inconsistent with the provisions of this Code are hereby repealed.

Repeal of this Code or any portion thereof shall not have the effect of reviving any prior tribal law theretofore repealed or suspended.

3.5 Classes of Gaming. There are two classes of gaming on Indian lands under this Code:

3.5.1 "Class I Gaming" means social gaming solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebration.

3.5.2 "Class II Gaming" means

3.5.2.1 The game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith), which is played for prizes, including monetary prizes, with cards bearing numbers or

other designations, in which the holder of the card covers such numbers or designations when objects similarly numbered or designated are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played at the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo; and

3.5.2.2 All card games operated by the Tribe prior to May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by the Tribe on or before this date, as determined by the Chairman of the National Indian Gaming Commission; and

3.5.2.3 Nonbanking card games explicitly authorized or not explicitly prohibited by the laws of the State and which are played at any location in the State, if played in conformity with State laws and regulations regarding hours or periods of operation of such card games or limitations on wagers or pot size in such card games.

3.5.3 "Class III Gaming" means all forms of gaming that are not Class I or Class II gaming.

3.6 Construction. In construing the provisions of this Code, unless the context otherwise requires, the following rules shall apply:

3.6.1 This Code shall be liberally construed to effect its purpose and to promote substantial justice.

3.6.2 Words in the present tense include the future and past tenses.

3.6.3 Words in the singular number include the plural, and words in the plural number include the singular.

3.6.4 Words of the masculine gender or neuter include masculine and feminine genders and the neuter.

3.7 Savings Clause. If any section of this Code is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

Section 4. Tribal Gaming Commission.

4.1 Establishment. The Tribe hereby charters, creates and establishes the Makah Tribal Gaming Commission as a governmental subdivision of the Tribe.

4.2 Location and Place of Business. The Tribal Gaming Commission shall be a resident of and maintain its headquarters, principal place of business, and offices on the Makah Indian Reservation. The Tribal Gaming Commission may, however, establish other places of business in such other locations as the Tribal Gaming Commission may from time to time determine to be in the best interest of the Tribe.

4.3 Duration. The Tribal Gaming Commission shall have perpetual existence and succession in its own name, unless dissolved by the Tribe pursuant to tribal law.

4.4 Attributes. As a governmental subdivision of the Tribe, the Tribal Gaming Commission has been delegated the right to exercise one or more of the substantial governmental functions of the Tribe, including regulation of tribal gaming pursuant to the IGRA and tribal law. It is the purpose and intent of the Tribe in creating the Tribal Gaming Commission that the operations of the Tribal Gaming Commission be conducted on behalf of the Tribe for the sole benefit and interests of the Tribe, its members, and the residents of the Reservation. In carrying out its purposes under this Code, the Tribal Gaming Commission shall function as an arm of the Tribe. Notwithstanding any authority delegated to the Tribal Gaming Commission under this Code, the Tribe reserves to itself the right to bring suit against any person or entity in its own right, on behalf of the Tribe or on behalf of the Tribal Gaming Commission, whenever the Tribe deems it necessary to protect the sovereignty, rights, and interests of the Tribe or the Tribal Gaming Commission.

4.5 Recognition as a Political Subdivision of the Tribe. The Tribal Council shall take all necessary steps to acquire recognition of the Tribal Gaming Commission as a political subdivision of the Tribe, recognized by all branches of the United States Government as having been delegated the right to exercise one or more substantial governmental functions of the Tribe.

4.6 Sovereign Immunity of the Tribal Gaming Commission. The Tribal Gaming Commission is hereby clothed with all the privileges and immunities of the Tribe, except as specifically limited by this Title or other tribal law, including sovereign immunity from suit in any tribal, federal, or state court. Except as provided in this section, nothing in this Code nor any action of the Tribe or the Tribal Gaming Commission shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribal Gaming Commission, or to be a consent of the Tribe or the Tribal Gaming Commission to the jurisdiction of the United States or of any state or any other tribe with regard to the business or affairs of the Tribe or the Tribal Gaming Commission to any cause of action, case, or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe or the Tribal Gaming Commission, or to be a consent of the Tribe or the Tribal Gaming Commission to suit in respect to any Indian land, or to be a consent of the Tribe or the Tribal Gaming Commission to the alienation, attachment, or encumbrance of any such land.

4.7 Sovereign Immunity of the Tribe. All inherent sovereign rights of the Tribe as a federally recognized Indian tribe with respect to the existence and activities of the Tribal Gaming Commission are hereby expressly reserved, including sovereign immunity from suit in any tribal, federal or state court. Except as provided in section 4.8 below, nothing in this Code nor any action of the Tribal Gaming Commission shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe, or to be a consent of the Tribe to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Tribal

Gaming Commission or the Tribe, or to be a consent of the Tribe to any cause of action, case, or controversy, or to the levy of any judgment, lien, or attachment upon any property of the Tribe, or to be a consent to suit in respect to any Indian land, or to be a consent to the alienation, attachment, or encumbrance of any such land.

4.8 Waiver of Sovereign Immunity of the Tribal Gaming Commission. Sovereign immunity of the Tribal Gaming Commission may be waived only by express resolutions of both the Tribal Gaming Commission and the Tribal Council after consultation with the Tribe's attorneys. All waivers of sovereign immunity must be preserved by resolution of the Tribal Gaming Commission and the Tribal Council to be of continuing force and effect. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Tribal Gaming Commission. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property, or funds, if any, of the Tribal Gaming Commission subject thereto, court having jurisdiction pursuant thereto, and law applicable thereto. Neither the power to sue and be sued provided in subsection 4.18.22 nor any express waiver of sovereign immunity by resolution of the Tribal Gaming Commission shall be deemed a consent to the levy of any judgment, lien, or attachment upon property of the Tribal Gaming Commission other than property specifically pledged or assigned, or a consent to suit in respect of any land within the exterior boundaries of the Reservation or a consent to the alienation, attachment, or encumbrance of any such land.

4.9 Credit of the Tribe or Tribal Gaming Commission. Nothing in this Code nor any activity of the Tribal Gaming Commission shall implicate or in any way involve the credit of the Tribe or the Tribal Gaming Commission.

4.10 Assets of the Tribal Gaming Commission. The Tribal Gaming Commission shall have only those assets specifically assigned to it by the Council or acquired in its name by the Tribe or by the Tribal Gaming Commission on its own behalf. No activity of the Tribal Gaming Commission nor any indebtedness incurred by it shall implicate or in any way involve or effect any assets of tribal members or the Tribe not assigned in writing to the Tribal Gaming Commission.

4.11 Membership.

4.11.1 Number of Commissioners. The Tribal Gaming Commission shall consist of three Commissioners, who shall be appointed by the Tribal Council.

4.11.2 Qualification of Commissioners. A Commissioner must be a member of the Tribe. No person shall serve as a Commissioner if:

4.11.2.1 The person's prior activities, criminal record, if any, or reputation, habits or associations:

4.11.2.1.1 Pose a threat to the public interest; or

4.11.2.1.2 Threaten the effective regulation and control of gaming; or

4.11.2.1.3 Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming; or

4.11.2.2 The person has been convicted or entered a plea of *nolo*

contendere to a felony or any gaming offense in any jurisdiction or to a misdemeanor involving dishonesty or moral turpitude; or

4.11.2.3 The person or any member of the person's immediate family has a direct financial interest in any gaming activity or facility; or

4.11.2.4 A member of the person's immediate family is an employee of any tribal gaming activity.

4.12 Term of Office. Each Commissioner shall serve a term of three years.

4.13 Ex-Officio Members. At the direction of the Tribal Council, any member of the Tribal Council, any tribal employee or any other person may be designated to participate, without vote, in Tribal Gaming Commission meetings.

4.14 Organization. The Tribal Gaming Commission shall develop its own operating procedures and shall elect from within itself a Chairman to direct meetings, a reporter to be responsible for keeping Tribal Gaming Commission minutes and transmitting to the Tribal Council a copy of those minutes, handling correspondence and reporting Tribal Gaming Commission decisions, and such other officers as the Tribal Council deems advisable.

4.15 Meetings.

4.15.1 Regular Meetings. The Tribal Gaming Commission shall hold at least one regular monthly meeting which shall take place on the first Monday of each month, or as otherwise determined by the Tribal Gaming Commission.

4.15.2 Special Meetings. Special meetings may be called at the request of the Tribal Council, the Chairman of the Tribal Gaming Commission, or two or more members of the Tribal Gaming Commission.

4.15.3 Compensation of Commissioners. An honorarium may be paid for attendance at each meeting.

4.15.4 Quorum. A quorum for all meetings shall consist of three members.

4.15.5 Voting. All questions arising in connection with the action of the Tribal Gaming Commission shall be decided by majority vote. The Chairman of the Tribal Gaming Commission shall be entitled to vote on any issue presented.

4.16 Removal of Members or Vacancies.

4.16.1 Removal. A Commissioner may be removed by the Council for serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty or integrity of the Tribal Gaming Commission or otherwise violates the letter or intent of this Code. Except as provided below, no Commissioner may be removed without notice and an opportunity for a hearing before the Council, and then only after the Commissioner has been given written notice of the specific charges at least ten days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on the Commissioner's behalf. If the Council determines that immediate removal of a

Commissioner is necessary to protect the interests of the Tribe, the Council may immediately remove the Commissioner temporarily, and the question of permanent removal shall be determined thereafter pursuant to Tribal Gaming Commission hearing procedures. A written record of all removal proceedings together with the charges and findings thereon shall be kept by the Tribal Secretary. The decision of the Council upon the removal of a Commissioner shall be final.

4.16.2 Vacancies. If any Commissioner shall die, resign, be removed, or for any reason be unable to serve as a Commissioner, the Council shall declare the Commissioner's position vacant and shall appoint another person to fill the position. The terms of office of each person appointed to replace an initial Commissioner shall be for the balance of any unexpired term for such position, provided, however, that any prospective appointee must meet the qualifications established by this Code.

4.17 Conflict of Interest. No person shall be appointed or continue serving as a Commissioner if that person has any personal, business, or legal relationship that creates a conflict of interest with the Commissioner's duties and responsibilities as a Commissioner. No member or employee of the Commission shall participate as a player in any tribal gaming activity.

4.18 Powers of the Tribal Gaming Commission. In furtherance, but not in limitation, of the Tribal Gaming Commission's purposes and responsibilities, and subject to any restrictions contained in this Code or other applicable law, the Tribal Gaming Commission shall have and is authorized to exercise by majority vote the following powers in addition to all powers already conferred by this Code:

4.18.1 To oversee the day-to-day operation of and to supervise, inspect and regulate all gaming activities within the jurisdiction of the Tribe.

4.18.2 To promote the full and proper enforcement of this Code and other applicable law regarding gaming activities within the jurisdiction of the Tribe.

4.18.3 To enact and enforce such rules and regulations regarding its activities and governing its internal affairs as the Tribal Gaming Commission may deem necessary and proper to effectuate the powers granted by this Code and the powers granted and duties imposed by applicable law.

4.18.4 To publish and distribute copies of this Code and Tribal Gaming Commission rules and any Council, Tribal Gaming Commission, or Tribal Court decisions regarding gaming matters.

4.18.5 To prepare and submit for Council approval proposals, including budget and monetary proposals, which could enable the Tribe to better carry forth the policies and intent of this Code.

4.18.6 To work with the staff of any tribal department, program, project, or operation and to cooperate with the Tribal Council or any Council Committee in regard to gaming issues.

4.18.7 To make or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any

game or gaming activity operating, or suspected of operating, within the jurisdiction of the Tribe. In undertaking such examination or investigation, the Tribal Gaming Commission may request the assistance of tribal gaming staff, federal and local law officials, legal counsel, and other third parties.

4.18.8 To maintain and keep current a record of new developments in the area of Indian gaming.

4.18.9 To request the assistance of the Tribal Court in conducting gaming hearings, defining terms used in this Code or other tribal laws, or in any other matter in which the Tribal Gaming Commission deems such assistance to be necessary or proper.

4.18.10 To consider any gaming matter brought before it by any person, organization or business, and all matters referred to it by the Tribal Council.

4.18.11 To obtain and publish a summary of federal revenue laws relating to gaming and to insure compliance with the same.

4.18.12 To arrange for training of Tribal Gaming Commission members, tribal employees and others in areas relating to the regulation or operation of gaming.

4.18.13 Upon prior explicit written approval of the Council, to employ such advisors as it may deem necessary. Advisors may include, but shall not be limited to, law enforcement specialists and gaming professionals, the Tribe's general or special counsel, and the Tribe's accountants.

4.18.14 To make recommendations to the Council on the hiring of all supervisory gaming employees.

4.18.15 To promulgate rules and regulations to implement and further the provisions of this Code.

4.18.16 To approve or disapprove any application for a tribal gaming license.

4.18.17 To consult with and make recommendations to the Tribal Council regarding changes in tribal gaming laws and policies.

4.18.18 To examine under oath, either orally or in writing, in hearings or otherwise, any person or agent, officer or employee of any person, or any other witness, with respect to any matters related to this Code, including enforcement of tribal gaming laws, regulations, and policies, and to compel by subpoena the attendance of witnesses and the production of any books, records, and papers with respect thereto.

4.18.19 When necessary or appropriate, to request the assistance and utilize the services of the courts, law enforcement and government officials and agencies, and private parties in exercising its powers and carrying out its responsibilities.

4.18.20 To delegate to an individual member or members of the Tribal Gaming Commission, or, with the approval of the Tribal Council, to Tribal Gaming Commission staff, such of its functions as may be necessary to administer this Code efficiently; provided that the Tribal Gaming Commission may not re-delegate its power to

exercise any substantial governmental function of the Tribe or its power to promulgate rules and regulations; and provided further that the Tribal Gaming Commission may not delegate to anyone the power to permanently revoke a tribal gaming license.

4.18.21 To permanently close, after notice and hearing, any game or games which are operating in violation of tribal law.

4.18.22 To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to the provisions of this Code and other tribal laws relating to sovereign immunity; provided that no suit shall be brought by the Tribal Gaming Commission without the prior explicit written approval of the Tribal Council.

4.18.23 To use the seal of the Tribe with the approval of the Tribal Council.

4.18.24 To purchase, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, and use property and assets of every description, real and personal, tangible or intangible, including money, securities, or any interests therein, rights and services of any kind and description or any interest therein; provided that the Tribal Gaming Commission shall have authority to purchase any interest in real property, whether located on or off the Reservation, only with the express, prior written consent of the Tribal Council as to each such action, and that title to such real property and property which is to become a fixture or permanent improvement or part of the real property shall be taken in the name of the Tribe or in the name of the United States in trust for the Tribe, and title to all trust and restricted real property shall remain in trust or restricted status.

4.18.25 To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its personal property and assets.

4.18.26 To deal in inventions, copyrights, and trademarks; to acquire by application, assignment, purchase, exchange, lease, hire, or otherwise; and to hold, own, use, license, lease and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvement, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, provided that title to all such interests shall be taken in the name of the Tribe.

4.18.27 With the prior permission of the Tribal Council, to borrow money and to make, accept, endorse, execute and issue bonds, debentures, promissory notes, guarantees, and other obligations of the Tribal Gaming Commission for moneys borrowed, or in payment for property acquired or for any of the purposes of the Tribal Gaming Commission and to secure payment of any obligations by secured interest, mortgage, pledge, deed, indenture, agreement, or other instrument of trust or by other lien upon, assignment of, or agreement in regard to all or any part of the property, rights, or privileges of the Tribal Gaming Commission.

4.18.28 To arbitrate, compromise, negotiate, or settle any dispute to which it is a party relating to the Tribal Gaming Commission's authorized activities.

4.18.29 To enter into, make, perform, and carry out any agreement, partnership, joint venture contract, or other undertaking with any federal, state, or local governmental agency, tribe, person, partnership, corporation, or other association or entity

for any lawful purpose pertaining to the business of the Tribal Gaming Commission or which is necessary or incidental to the accomplishment of the purposes of the Tribal Gaming Commission.

4.18.30 To exercise the tribal power to tax authorized by the Makah Tribal Constitution in accordance with a Council resolution delegating such power to the Tribal Gaming Commission and in accordance with this Code and other applicable law.

4.18.31 To purchase insurance from any stock or mutual company for any property, or against any risk or hazard.

4.18.32 To engage in any and all activities which directly or indirectly carry out the purposes of the Tribe as set forth in this Code.

4.18.33 With prior approval of the Tribal Council, to make application and accept grants and other awards from private and governmental sources in carrying out or furthering the purposes of the Tribal Gaming Commission or the Tribe.

4.18.34 To exercise all authority delegated to it or conferred upon it by law and to take all action which shall be reasonably necessary and proper for carrying into execution the foregoing powers and all of the powers vested in this Code as permitted by the purposes and powers herein stated and which are deemed to be in the best interests of the Tribe, exercising prudent management and good business judgment, all in compliance with applicable law.

4.18.35 To establish and maintain such bank accounts as may be necessary or convenient.

4.18.36 To require by regulation the filing of any records, forms, and reports and all other information desired by the Council for implementation of this Code relating to any gaming activity or operation or any investigation as required by tribal law and the IGRA.

4.18.37 To provide for an internal system of recordkeeping with adequate safeguards for preserving confidentiality as deemed necessary by the Tribal Gaming Commission. All applications, background investigations and Tribal Gaming Commission decisions shall be retained in Tribal Gaming Commission files for a period of at least 10 years.

4.18.38 To adopt a schedule of fees to be charged for gaming licenses issued pursuant to this Code.

4.18.39 To adopt a schedule of fees and charges for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records.

4.18.40 To conduct background investigations of all persons who propose to participate in any gaming activity or operation.

4.18.41 To compel obedience of its lawful orders by proceedings of mandamus or injunction or other proper proceedings in the name of the Tribe in Tribal Court or in any other court having jurisdiction of the parties and of the subject matter; provided that no suit

shall be brought by the Tribal Gaming Commission without the prior explicit written approval of the Tribal Council after consultation with the tribal attorneys.

4.18.42 To discipline any licensee or other person participating in any gaming activity by ordering immediate compliance with this Code or Tribal Gaming Commission regulations and to issue an order of temporary suspension of any license issued under this Code, whenever the Tribal Gaming Commission is notified of a violation by any such person of this Code or any other applicable law.

4.18.43 To issue an order of temporary closure of any gaming activity or operation in the event the Tribal Gaming Commission determines that immediate closure is necessary to protect assets or interests of the Tribe, pursuant to Tribal Gaming Commission regulations, or whenever the Tribal Gaming Commission shall receive information from the National Indian Gaming Commission that a primary management official or key employee of an licensee does not meet the standards for being licensed under the IGRA.

4.18.44 To become self-regulating whenever the Tribe becomes eligible for a certificate of self-regulation under the IGRA.

4.19 Annual Budget. The Tribal Gaming Commission shall prepare an annual operating budget for all Tribal Gaming Commission activities and present it to the Council by August 15th of each year.

4.20 Tribal Gaming Commission Regulations.

4.20.1 Tribal Gaming Commission regulations necessary to carry out the orderly performance of its duties and powers shall include, but shall not be limited to:

4.20.1.1 Internal operational procedures of the Tribal Gaming Commission and its staff;

4.20.1.2 Interpretation and application of this Code as may be necessary to carry out the Tribal Gaming Commission's duties and exercise its powers;

4.20.1.3 A regulatory system for all gaming activity, including accounting, contracting, management, and supervision;

4.20.1.4 The findings of any reports or other information required by or necessary to implement this Code; and

4.20.1.5 The conduct of inspections, investigations, hearings, enforcement actions, and other powers of the Tribal Gaming Commission authorized by this Code.

4.20.2 No regulation of the Tribal Gaming Commission shall be of any force or effect unless it is adopted by the Tribal Gaming Commission by written resolution and subsequently approved by a resolution of the Tribal Council and filed for record both in the office of the Tribal Secretary and in the Office of the Clerk of the Tribal Court.

4.20.3 The Tribal Court and any other court of competent jurisdiction shall take

judicial notice of all Tribal Gaming Commission regulations adopted pursuant to this Code.

4.21 Right of Entrance; Monthly Inspection. The Tribal Gaming Commission and duly authorized officers and employees of the Tribal Gaming Commission may enter upon any premises of any gaming operator or gaming facility, during regular business hours, for the purpose of making inspections and examining the accounts, books, papers, and documents of any such gaming operator or gaming facility. Such gaming operator shall facilitate such inspection or examinations by giving every reasonable aid to the Tribal Gaming Commission and to any properly authorized officer or employee.

A Commissioner or a member of the Tribal Gaming Commission's staff shall visit each tribally owned or tribally operated gaming facility at least once every two weeks during normal business hours for the purpose of monitoring its operation. Such visits shall be unannounced.

4.22 Investigations. The Tribal Gaming Commission, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any person who is subject to the provisions of this Code. In conducting such investigation, the Tribal Gaming Commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording any affected party notice and an opportunity for a hearing pursuant to Tribal Gaming Commission regulations.

4.23 Hearings; Examiner. Pursuant to regulations, the Tribal Gaming Commission may hold any hearing it deems to be reasonably required in administration of its powers and duties under this Code. Whenever it shall appear to the satisfaction of the Tribal Gaming Commission that all of the interested parties involved in any proposed hearing have agreed concerning the matter at hand, the Tribal Gaming Commission may issue its order without a hearing.

The Tribal Gaming Commission may designate one of its members to act as examiner for the purpose of holding any such hearing or the Tribal Gaming Commission may appoint another person to act as examiner under subsection 4.24 below. The Tribal Gaming Commission shall provide reasonable notice and the right to present oral or written testimony to all people interested therein as determined by the Tribal Gaming Commission.

4.24 Appointment of Examiner; Power of Examiner. The Tribal Gaming Commission may appoint any person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the Tribal Gaming Commission or any member thereof has power or authority to hold. Any such appointment shall constitute a delegation to such examiner of all powers of a Commissioner under this Code with respect to any such hearing.

4.25 Bank Account for Tribally Owned or Tribally Managed Gaming Facility. The Tribal Gaming Commission shall ensure that the Tribe opens a separate bank account for each tribally owned or tribally managed gaming activity, and all money of such facility shall be deposited in that account. The Tribal Gaming Commission shall determine who shall have check writing authority from such account.

4.26 Quarterly Report of Tribal General Manager Reports. The Tribal Gaming Commission shall file a quarterly report with the Council summarizing reports received from each manager of any tribally owned or managed gaming activity and make such comments as it deems necessary to keep the Council fully informed as to the status of various tribal gaming activities.

Section 5. Gaming Licenses.

5.1 Applicability. This Code applies to all persons engaged in gaming within the jurisdiction of the Tribe. Any application for license pursuant to this Code and participation in any gaming activity within the jurisdiction of the Tribe shall be deemed to be a consent to the jurisdiction of the Tribe and the Tribal Court in all matters arising from the conduct of such gaming and all matters arising under any of the provisions of this Code or other tribal laws; provided, that this section is not and shall not be deemed or construed to be a waiver of the Tribe's sovereign immunity from suit in any federal, state or tribal court.

5.2 No License Requirement for Class I Gaming. A tribal license shall not be required for any Class I gaming activity or operation provided, however, that each Class I gaming activity or operation must have written permission of the Tribal Gaming Commission, and such permission must be on file with the Tribal Secretary before any such Class I gaming is conducted.

5.3 Class II License Required. No person shall operate Class II gaming within the jurisdiction of the Tribe unless such gaming is licensed by the Tribe.

5.3.1 Tribally Owned or Tribally Operated Class II. The Tribe shall issue Class II licenses which shall be required of all tribally owned or tribally operated gaming activity operating one or more Class II games of chance. A separate license shall be obtained for each place, facility or location where Class II gaming is authorized by this ordinance and an approved Tribal/State Compact.

5.4 Application Procedures.

5.4.1 Application for Gaming License. For any proposed Class II gaming activity, the Council shall file with the Tribal Gaming Commission an application for a tribally owned or tribally operated Class II gaming license, which shall contain the name of the proposed enterprise, its location, and all other pertinent information required by this Code and Tribal Gaming Commission regulations.

5.4.2 Tribally Owned and Tribally Operated Class II. Before issuing a license to a tribally owned or operated Class II gaming activity the Tribal Gaming Commission shall:

5.4.2.1 Review the proposed gaming activity to ensure that all criteria required by this Code shall be met.

5.4.2.2 Perform the necessary background checks on management contractors, primary management officials, and key employees required by this Code.

5.4.2.3 Review and approve the accounting procedures to be used in such gaming activity.

5.4.2.4 Take any additional steps necessary to ensure the integrity of such gaming activity.

5.5 Criteria That a Potential Gaming Operator Must Meet. The Tribal Gaming Commission shall issue the above license to any tribally owned or tribally operated Class II proposed gaming activity only if all of the following criteria are met:

5.5.1 The proposed gaming activity or facility is to be located on land that was held in trust for the Tribe prior to October 17, 1988 or on trust lands that were located within or contiguous to the boundaries of the Reservation on October 17, 1988 or on lands taken into trust after October 17, 1988 as a settlement of a claim.

5.5.2 The proposed gaming activity is to be played as Class II gaming as defined by the IGRA.

5.5.3 The proposed gaming activity is authorized by a Tribal Council resolution.

5.5.4 The Tribe will have the sole proprietary interest and the exclusive responsibility for the conduct of the proposed gaming activity, Any management contract entered into by the Tribe must comply fully with tribal and federal and law and be properly approved by the National Indian Gaming Commission.

5.5.5 The resolution authorizing the proposed gaming activity provides that:

5.5.5.1 The revenues of the proposed gaming activity shall be audited annually and copies of those audits will be provided to the Tribal Gaming Commission and the National Indian Gaming Commission.

5.5.5.2 The proposed gaming activity shall comply with all IRS reporting and filing requirements.

5.5.5.3 All of the net revenues of the proposed gaming activity shall be used for the purposes stated in subsection 10.3.

5.5.5.4 All contracts for supplies, services, or concessions for an amount in excess of \$25,000 annually (except contracts for legal and consulting services) shall be subject to an annual independent audit.

5.5.5.5 The construction or maintenance of the gaming facility and the operation of the proposed gaming activity shall be conducted in a manner which the Tribal Gaming Commission finds will adequately protect the environment and the public health and safety.

5.5.5.6 The general manager, all primary management officials, and all key employees have passed the background investigations and obtained the tribal gaming employee licenses required by this Code. Each application must state in writing that all future management officials and key employees will be required to pass background investigations and obtain tribal gaming employee licenses before they are hired.

5.5.5.7 The Tribal Gaming Commission shall have the authority to regulate the proposed gaming activity.

5.5.5.8 The proposed gaming activity shall pay to the National Indian Gaming Commission such fees as federal law may require to be paid.

5.6 License Application Fees. No application fee shall be required for a tribally owned or tribally operated Class II gaming activity.

5.7 License Tax. No annual license tax shall be required for a tribally owned or tribally operated Class II gaming operation.

5.8 Form of Gaming License. Every gaming license issued by the Tribal Gaming Commission shall include the name and address of the authorized licensee and the signature of an authorized officer of the Tribal Gaming Commission.

5.9 Scope of Gaming License. A gaming license issued by the Tribal Gaming Commission shall be effective only for the gaming activity and location specified in the application. Such license may be transferred only upon prior approval of the Tribal Gaming Commission upon written request that details the proposed new gaming activity, its location, and proposed gaming operator.

5.10 Terms of License. A tribally owned and tribally operated Class II gaming license shall be valid for a period of one year from the date of issuance.

5.11 Posting of Licenses. Each gaming operator shall post its tribal gaming license in a conspicuous location at the gaming operator's gaming facility. If a gaming operator has more than one gaming facility, the gaming operator must obtain and post a separate license for each gaming facility. A gaming operator licensed to sell raffle tickets outside a gaming facility shall carry a copy of the gaming license under which such person is employed.

5.12 Gaming License Renewals. Each tribal gaming license must be renewed annually. No renewal fee shall be required for a tribally owned or tribally operated Class II license. In order to obtain a renewal of a license, the gaming operator shall submit a written renewal application to the Tribal Gaming Commission on the form provided by the Tribal Gaming Commission. No renewal application shall be approved until the annual report required by subsection 5.13 has been properly filed. All renewal applications submitted by a tribally owned Class II gaming activity shall be approved within a reasonable time unless the Commission determines, based on reasonable grounds, that the enterprise has been or will be operated in violation of tribal, federal, or other applicable law or the terms of the tribal-state gaming compact.

5.13 Annual Reports. Each gaming operator who possesses a Class II tribal gaming license must file an annual report with the Tribal Gaming Commission and the Tribal Council between the 15th day and the last day of the 12th month of the duration of each such license. The report shall be submitted to the Tribal Gaming Commission on the annual report form provided by the Tribal Gaming Commission and shall include the following information:

5.13.1 The name, address, and telephone number of the gaming operator;

5.13.2 The names, addresses, and titles of its current general manager and all submanagers;

5.13.3 A description of each gaming activity that it is operated and the total gross proceeds of each;

5.13.4 A written copy of any changes the gaming operator proposes to initiate in its rules;

5.13.5 A statement of the specific dates and times during which the gaming activity will be operated during the next license period;

5.13.6 The name and address of the person who will be the general manager and the names and addresses of all persons who will be the primary management officials during the next license period;

5.13.7 A statement of any changes in the general manager or in the primary management officials or key employees who will operate the gaming activity over the next license period;

5.13.8 The names and addresses of any employees who the Tribal Gaming Commission may determine to be key employees during review of the application;

5.13.9 Written proof that the gaming operator has paid to the National Indian Gaming Commission such fees as federal and tribal law may require it to pay, and will continue to do so;

5.13.10 A sworn statement that the gaming operator has complied with the Internal Revenue Code and regulations, including written notice of customer winnings, and a statement that the gaming operator shall continue to obey all tribal and federal laws and shall hold the Tribal Gaming Commission and the Tribe harmless for failure to do so;

5.13.11 The description of any location at which the gaming activity has been conducted and any new location which is expected to be established during the next license period;

5.13.12 The number of full-time equivalent persons, on an annualized basis, employed by the operation during the past 12 months, together with a projection of the number of full-time equivalent persons who are expected to be employed during the next license period;

5.13.13 The total gross proceeds of the gaming operator attributable directly or indirectly to tribally licensed gaming activity over the proceeding 12 months;

5.13.14 A sworn statement that the gaming operator will continue to comply with all tribal and federal laws applicable to the gaming operator's gaming operation;

5.13.15 A sworn statement that the gaming operator and all of its key employees and management contractors continue to consent to Tribal Court jurisdiction and service of process in all matters arising from the conduct of tribally licensed gaming activity;

5.13.16 The name, address, and signature of the agent who will accept service of process on behalf of the gaming operator, who must reside on the Reservation; and

5.13.17 If the gaming operator is a corporation, a copy of any amendment to its articles of incorporation, properly certified by the incorporating government, unless a current copy has already been filed with the Tribal Gaming Commission.

5.14 Procedure to Remedy Gaming License Violation. If the Tribal Gaming Commission finds that a tribally owned or operated gaming activity is being operated in violation of this Code or otherwise presents a threat to the Tribe or to the public, the Tribal Gaming Commission shall immediately take all necessary steps to bring such activity into compliance, including, but not limited to, closing down such activity temporarily or permanently pursuant to enforcement procedures and

regulations duly promulgated by the Tribal Gaming Commission under this Code. Nothing contained in this Section or in this Code shall be construed as limiting, restraining or effecting a waiver of the Tribe or the Tribal Council's right and authority to take appropriate action to remedy any gaming violation pursuant to tribal and federal law.

Section 6. Gaming Employee Licenses.

6.1 Current and Valid Gaming Employee License Required. Every primary management official and every key employee of any Class II gaming activity subject to this Code shall possess a current, valid gaming employee license.

6.2 Application for Gaming Employee License.

6.2.1 A person seeking a tribal gaming employee license must be at least 18 years of age. All applicants shall submit an application to the Tribal Gaming Commission on such form and in such manner as the Tribal Gaming Commission may require.

6.2.2 Such application shall include the following information (25 CFR § 556.4):

6.2.2.1 Full name, including all other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages spoken or written.

6.2.2.2 Currently and for the previous 5 years: business and employment positions held, ownership interest in those businesses, business and residence addresses, and drivers license numbers.

6.2.2.3 The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed above.

6.2.2.4 Current business and residence telephone numbers.

6.2.2.5 A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses.

6.2.2.6 A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses.

6.2.2.7 The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted.

6.2.2.8 For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved , and the date and disposition if any.

6.2.2.9 For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition.

6.2.2.10 For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to the above stated requirements of this section, the criminal charge, the name and address of the court involved and the date and disposition.

6.2.2.11 The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted.

6.2.2.12 The names and addresses of the applicant's living parents, grandparents, spouse, children, brothers, and sisters.

6.2.2.13 A sworn statement that neither the applicant nor any member of the applicant's immediate family has a past or current financial interest, other than a salary interest, in any gaming-related enterprise anywhere. If the applicant has any relative who has such a relationship, the applicant shall fully disclose that relative's name and the nature of the relationship.

6.2.2.14 A disclosure of any civil or criminal judgments rendered against the applicant, including the case number, a description of the judgment, and the name and address of the court involved.

6.2.2.15 Any other information which might bring into question the applicant's fitness to serve as a primary management official or key employee of a licensed gaming operation.

6.2.2.16 A photograph taken in the last 12 months.

6.2.2.17 A set of fingerprints taken by the Makah Tribal Police which shall be forwarded directly to the National Indian Gaming Commission which shall in turn forward them to the FBI for a National Criminal Information records search in compliance with the requirements of the IGRA.

6.2.2.18 The name, address, and telephone number of the gaming facility and of the gaming operator for whom the applicant intends to work and the specific location in which the applicant will be employed.

6.2.2.19 Written permission giving the Tribal Gaming Commission or its designee the right to investigate the applicant's background, including the applicant's criminal record, civil and criminal judgments, and credit history.

6.2.2.20 Each application shall be accompanied by a sworn statement that if the license is issued, the applicant will submit to the jurisdiction of the Tribe and the Tribal Court.

6.2.2.21 Each application shall be accompanied by a sworn statement that the applicant will abide by this Code and all other applicable laws.

6.2.2.22 Each application shall be accompanied by a written statement that the applicant has read, understands and approves of the following Privacy Act notice:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in gaming activities. The information will be used by National Indian

Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

6.2.2.23 Each application for a gaming employee license shall be accompanied by a non-refundable application fee, the amount of which shall be set by the Tribal Gaming Commission.

6.2.2.24 Each application shall state that the disclosure of an applicant's social security number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the application.

6.2.2.25 Each application shall contain the following "Notice of False Statements" (25 CFR § 556.3):

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also you may be punished by fine or imprisonment (U.S. Code, Title 18, Section 1001).

6.3 Review Procedure for Gaming Employee License Application - Compliance With 25 C.F.R. § 558.3. Before issuing a gaming employee license, the Tribal Gaming Commission shall:

6.3.1 Obtain a copy of the application and insure that it has been reviewed for completeness.

6.3.2 Insure that the applicant has been fingerprinted by the Makah Tribal Police or other properly designated law enforcement entity and that those fingerprints have been sent by that law enforcement body to the NIGC which will in turn forward them on to the FBI for a National Criminal Information records search in compliance with the IGRA.

6.3.3 Forward a copy of the completed application to the National Indian Gaming Commission for review.

6.3.4 Perform or designate another person or entity to performed the necessary background investigation of the applicant. Such investigation shall consist of verifying all of the information contained in the application. This process shall include contacting all of the applicant's references and previous employers who are identified in the application or of whom the investigator learns during the background check. In conducting a background investigation, the interviewer shall promise to keep confidential the identity of each person interviewed. Such investigation and interviews shall focus on obtaining information on the applicants prior activities, criminal record, if any, and reputation, habits and associations.

6.3.5 The findings of all background investigations shall be compiled into a written report. This report shall detail the steps taken in conducting the investigation, the results obtained, the conclusions reached and the basis for those conclusions. A copy of which shall be sent to the National Indian Gaming Regulatory Commission and a copy of which shall be given to each member of the Commission .

6.3.6 When the results of the FBI's criminal records information search and the Tribal background check are completed, the Commission shall review the results and determine whether or not to issue a temporary license to the applicant. The Commission shall record its decision and the reasons for it in writing. A copy of this written decision shall be kept in the Commissions files.

6.3.7 Within 60 days after a gaming employee holding a temporary license begins work or within 60 days of the Chairman's approval of this Code, the Tribal Gaming Commission shall forward to the National Indian Gaming Commission a copy of the completed application, the results of the background check performed and the written report of the Tribal Gaming Commission's findings and decision. A class II gaming activity subject to this Code shall not employ a key employee or primary management official who does not have a license after ninety days.

6.3.8 During a 30-day period beginning when the National Indian Gaming Commission receives the information described above, the Chairman of the National Indian Gaming Commission may request additional information from the Tribal Gaming Commission concerning a key employee or primary management official who is the subject of such information. The Tribal Gaming Commission shall comply fully with such request. Any such request shall suspend the 30-day review period until the Chairman of the National Indian Gaming Commission receives the additional information. If, within such 30-day period, the National Indian Gaming Commission notifies the Tribe that it has no objection to the issuance of a license to the applicant, the Tribal Gaming Commission may issue a permanent license to the applicant. If, however, the Tribal Gaming Commission determines not to license the applicant, it shall notify the National Indian Gaming Commission of its decision and the reasons for it. Additionally, if, within the 30-day period described above, the National Indian Gaming Commission provides the Tribe with a statement itemizing objections to the issuance of a license to the applicant, the Tribal Gaming Commission shall reconsider the application, taking into account the objections of the National Indian Gaming Commission. The Tribal Gaming Commission shall then make the final decision as to whether or not to issue a permanent license to such applicant, and the Tribal Gaming Commission shall notify the National Indian Gaming Commission of its final decision.

6.3.9 All applications, background checks, and Tribal Gaming Commission decisions shall be retained in the Tribal Gaming Commission files for a period of at least 10 years.

6.4 Standards For Denial of a Key Employee or Primary Management Official License.
The Commission shall not license, hire, or employ as a key employee or primary management official in connection with Class II gaming, any person who:

6.4.1 Is under the age of 18.

6.4.2 Has been convicted of or entered a plea of no contest to a gambling offense, fraud or misrepresentation; or

6.4.3 Has been convicted of or entered a plea of guilty or no contest to any offense in subparagraph (2) within the immediately preceding five years; this provision shall not apply if that person has been pardoned by the Governor of the State where the conviction occurred or, if a tribal member, has been determined by the Tribe to be a person who is not likely again to engage in any offensive or criminal course of conduct and the public good does not require that the applicant be denied a license as a key employee or primary management official; or

6.4.4 If the Tribal Gaming Commission determines, after notice and hearing, that the person has participated in organized crime or unlawful gambling or is a person whose prior activities criminal record, reputation, habits, and/or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming or to the carrying on of the business and financial arrangements incidental to the conduct of gaming.

6.4.5 If the applicant is found to have supplied false or misleading information or has omitted material information on the applicant's license application.

6.4.6 Provided further that the Tribal Gaming Commission may, by regulations, add additional limitations and conditions for denial of said license.

6.5 Scope of Gaming Employee License. A gaming employee license shall be effective only for the person to whom it is issued and only with respect to the gaming facility specified in the application. Any such license may be transferred to a new gaming facility only upon prior approval of the Tribal Gaming Commission, upon written request of the licensee identifying the proposed new gaming facility, its location, and the proposed gaming operator thereof.

6.6 Licensing Period. An employee gaming license issued pursuant to this Code shall be effective for a period of one year from the date of issuance and shall state on its face the date that the license became effective and the date that it expires.

6.7 Renewals. A holder of an employee gaming license shall apply to the Tribal Gaming Commission for a renewal before the employee's original license has expired, updating all information contained in the original application.

6.8 Requirement to Produce License Upon Request. Any person receiving a employee gaming license must carry that license upon his person during all working hours and must produce that license upon the request of any law enforcement official with jurisdiction over the gaming activity or any agent of the Tribe, the Tribal Gaming Commission, or the National Indian Gaming Commission.

6.9 Permanent License Revocation of Employee Gaming License.

6.9.1 Grounds for Permanent Revocation. The Tribal Gaming Commission may permanently revoke an employee gaming license, after notice and an opportunity for a hearing, for any of the following reasons:

6.9.1.1 The employee has withheld pertinent information on the employee's application;

6.9.1.2 The employee has made false statements on the application;

6.9.1.3 The employee has participated in gaming activity which was not authorized by any tribal gaming license;

6.9.1.4 The employee has attempted to bribe a tribal council member, Tribal Gaming Commissioner, or other person in an attempt to avoid or circumvent this Code or any other applicable law;

6.9.1.5 The employee has offered something of value or accepted a loan, financing, or other thing of value from a Tribal Gaming Commission member a subordinate employee or any person participating in any gaming activity;

6.9.1.6 The employee has knowingly promoted, played, or participated in any gaming activity operated in violation of this Code or any other applicable law;

6.9.1.7 The employee has been knowingly involved in the falsification of books or records which relate to a transaction connected with the operation of gaming activity;

6.9.1.8 The employee has violated any provision of this Code or the rules and regulations of the Tribal Gaming Commission;

6.9.1.9 The employee has been convicted of, or has entered a plea of *nolo contendere* to, any crime involving gaming, fraud, theft, embezzlement, or other activity which, if perpetrated at his gaming operator's place of employment, would injure or pose a threat to the public interest, or the integrity of the gaming activity, or the effective regulation of gaming or enhance the dangers of unfair, unsuitable, or illegal gaming practices;

6.9.1.10 The employee has been convicted of, or entered a plea of *nolo contendere* to, a crime involving the sale of illegal narcotics or controlled substances;

6.9.1.11 The employee has failed to comply with any lawful order, inquiry or directive of the Tribal Gaming Commission, the Tribal Council, or any administrative or judicial body of competent jurisdiction, arising from any gaming activity whether or not subject to this Code; or

6.9.1.12 The employee is determined to have present or prior activities, including criminal record, or reputation, habits or associations which pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming.

6.9.2 Procedure for Permanent Revocation. Whenever the Tribal Gaming Commission has reasonable cause to believe that an employee has violated any of the conditions in section 6.9.1, or has failed to comply with any condition of the employee's tribal gaming license, or has failed to obtain a license, the Tribal Gaming Commission or its designee may either undertake an investigation, or serve upon such employee an order to show cause why the employee's license should not be revoked, or why the employee should not be enjoined from conducting gaming activities within the jurisdiction of the Tribe. The

order shall state the grounds for which such revocation or injunction is sought and that the employee shall have an opportunity to present testimony and to cross examine opposing witnesses, and to present any other evidence as to why revocation or injunction should not issued. The hearing shall be set for not less than ten days nor more than 14 days from the date of notice. The hearing shall be governed in all respects in accordance with tribal law and Tribal Gaming Commission regulations.

6.10 Temporary Suspension of Employee Gaming License.

6.10.1 Grounds for Temporary Suspension. The Tribal Gaming Commission may temporarily suspend an employee gaming license for not more than thirty days for any of the following reasons:

6.10.1.1 The employee has been charged with a violation of any gaming law;

6.10.1.2 The employee's continued employment as a primary management official or key employee of a game or gaming activity poses a threat to the general public;

6.10.1.3 The employee has made a material false statement in the employee's license application;

6.10.1.4 The employee has participated in gaming activity unauthorized by the employee's tribal gaming license;

6.10.1.5 The employee has refused to comply with any lawful order of the Tribal Gaming Commission, the Tribal Council, the Tribal Court, or the National Indian Gaming Commission arising from or relating to gaming.

6.10.2 Immediate Temporary Suspension. The Tribal Gaming Commission shall immediately temporarily suspend an employee gaming license for not more than thirty days upon receipt of notification from the National Indian Gaming Commission pursuant to 25 C.F.R. § 558.5 that reliable information exists that such gaming employee is not eligible for employment. Upon receipt of such notification, the Commission shall notify the gaming employee of the suspension and proposed revocation and the time and place for hearing under section 6.10.3 below.

6.10.3 Procedure for Temporary Suspension. Whenever the Tribal Gaming Commission has reasonable cause to believe that a person has violated any of the conditions in subsections 6.10.1, or has failed to comply with any condition of that person's employee gaming license or of this Code constituting a direct and immediate threat to the peace, safety, morals, or health or welfare of the community, or whenever the Tribal Gaming Commission receives the notification referred to in section 6.10.2, the Tribal Gaming Commission or its designee shall issue a notice of temporary suspension of such person's employee gaming license, which shall be served upon the employee. The notice shall state the grounds upon which such temporary suspension is ordered and that the employee shall have an opportunity to present testimony and to cross-examine opposing witnesses, and to present any other evidence as to why suspension should not issue. The employee shall immediately cease and desist operating in the employee's management position or in the employee's capacity as a key employee upon receipt of the order, but such person may file

a notice of appeal with the Tribal Gaming Commission within five days of such receipt. Upon receipt of such notice of appeal, the Tribal Gaming Commission shall hold a hearing on the order within fourteen calendar days of its receipt of the appeal. At the hearing, the employee shall have the opportunity to present testimony and cross-examine witnesses, and present any other evidence as to why temporary suspension order should not be issued. Such hearing shall be governed in all respects by tribal law and Tribal Gaming Commission regulations. After said revocation hearing, the Tribe shall notify the National Indian Gaming Commission of its decision in writing.

Section 7. Licensing of Gaming Service Providers

7.1 Requirement for license. No person or entity may provide gaming services, gaming apparatus or gaming equipment to any gaming facility or gaming operator unless such person or entity is the holder of a valid and current gaming services vendors' license issued by the Tribal Gaming Commission; provided, however, that such vendor will automatically be granted said license if:

7.1.1 the person or entity has a current valid license to provide the same type of gaming services, apparatus or equipment from the State of Washington; or

7.1.2 the person or entity has a current valid license to provide the same type of gaming services equipment from the gaming regulatory agency of the State of New Jersey or the State of Nevada and provides its consent for the disclosure to the Tribe of all information regarding such person or entity held by the appropriate state gaming regulatory agency and the Tribal Gaming Commission is able to secure disclosure of such information.

7.1.3 any license granted under either subsection 7.1.1 or 7.1.2 may be revoked or suspended by the Tribal Gaming Commission in the same manner and for the same reasons as provided in subsection 7.7 below.

7.2 Procedure for licensing. Each applicant for a gaming services vendors' license shall submit a completed application to the Tribal Gaming Commission on forms provided by the Commission. The gaming application shall contain such information, documentation and assurances as may be required by the Commission and shall identify all of the applicant's principals and the applicant's and each such principal's personal and family history, personal and business references, criminal conviction record, business activities, financial affairs, prior gaming industry experience and general education background. Each application shall be accompanied by a fingerprint card(s) and photograph(s) of the applicant and of each principal of the applicant in such form as required by the Commission upon receipt of a completed application, the Tribal Gaming Commission shall forward a copy thereof to the National Indian Gaming Regulatory Commission for a Federal Bureau of Investigation criminal information check through the Federal Bureau of Investigation National Criminal Information Center.

7.3 Fee for license. Any person or entity filing an application for a gaming services vendors license pursuant to this section shall pay to the Commission a fee, set by the Commission, sufficient to compensate the Commission for the cost of review of the license applications.

7.4 Background Investigation of Applicants. Upon receipt of an application for a gaming services vendors' license the Tribal Gaming Commission shall conduct an investigation of the applicant and each of its principals and shall verify the information contained in the application. Such investigation shall include a criminal records check on the applicant and on each of the applicant's principals. The Commission shall conduct such other investigation of applicant and its principals as may be deemed appropriate by the Commission.

7.5 Action by Tribal Gaming Commission. Except as provided in subsection 7.1.1 and 7.1.2, the Commission shall, as soon as practicable after completion of the background investigation under subsection 7.4, either grant or deny the license. The Commission may deny license to any applicant upon a determination that the applicant, or any principal identified with such applicant:

7.5.1 is a person or entity whose prior activities, criminal record, if any, or

reputation, habits and associations pose a threat to the effective regulation of gaming or create or enhance the changes of unfair or illegal practices, methods, and activities in the conduct of the gaming activities permitted hereunder; or

7.5.2 has failed to provide information reasonably required to investigate the applicant's suitability for a license or has failed to reveal any fact material to such application or has furnished any information which is untrue or misleading in connection with such application.

7.6 Duration of license and renewal. Any gaming services vendors' license issued by the Tribal Gaming Commission shall be effective for not more than one year and shall expire on the thirtieth day of September of each year; provided, that a license that has applied for renewal prior to expiration may continue to provide services under the expired license until final action is taken on the renewal application by the Commission. Previously licensed applicants or applicants for renewal shall provide currently updated application material but will not be required to resubmit historical data already available to the Commission. No additional background investigation of an applicant for license renewal shall be required unless new information concerning the renewal applicant's continuing suitability or eligibility for a license has been presented to the Commission.

7.7 Revocation or suspension of license. The Commission may investigate any licensed person or entity or any principal of any entity at any time and the Commission may suspend or revoke any license issued under this section if new information concerning any facts not available to the Commission at the time a license was issued or any renewal thereof, is presented to the Commission and such information would justify denial of an original license or any renewal thereof pursuant to this section. No license shall be revoked or suspended except after notice and hearing under the procedures described below. A licensed person or entity shall be entitled to any payment due for services provided or goods delivered prior to the effective date of suspension or revocation of its license.

Whenever the Tribal Gaming Commission has reasonable cause to believe that a person or entity holding a valid gaming services vendors' license did not qualify for said license or that the person or entity or any principal of the entity has engaged in activities which would justify denial of the renewal of said license the Tribal Gaming Commission or its designee shall issue a notice of suspension of such person or entity's license, which shall be served upon the licensee at its principal place of business. The notice shall state the grounds upon which such temporary suspension is ordered and provide that the person or entity shall have an opportunity to present testimony and to cross-examine opposing witnesses, and to present any other evidence as to why a permanent suspension should not be issued. Such hearing shall be governed in all respects by tribal law and Tribal Gaming Commission regulations.

Whenever the Commission suspends a license under this subsection, the licenses shall immediately cease and desist all gaming services to tribally licensed gaming operators and facilities. Decisions of the Commission pursuant to this section, following any administrative review or appeal allowed under this section or otherwise permitted by the Commission, constitutes final Commission action for purposes of judicial review under tribal law.

7.8 Regulation of Nongaming Persons and Entities. Any person or entity that provides goods or services to a tribally licensed gaming operation or facility, other than gaming services or gaming equipment, in an amount in excess of \$50,000 in any twelve month period, and any labor organization seeking to represent employees of a tribally licensed gaming operation or facility, shall agree to cooperate with the Commission and Tribal and federal law enforcement in any investigation

deemed necessary by either the Commission or the federal government relative to the fitness of such enterprise or labor organization to engage in business with a gaming operation or facility, or relative to the conduct of a gaming operation or facility, or labor organization in connection with such activity. The Commission may bar such person or entity from providing goods or services to a tribally licensed gaming operation or facility, or such labor organization from receiving dues from licensed employees of any gaming operation or facility, or may bar such labor organization from representing gaming employees, upon a determination that such person, entity or labor organization or principal thereof is a person or entity whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the effective regulation of gaming or create or enhance the dangers of unfair or illegal practices, methods and activities in the conduct of gaming. Any person, entity or labor organization affected by a bar under this subsection shall have a right to notice and hearing as provided for licensees under section 7.7.

Section 8. Provisions of General Applicability to All Gaming Operators.

8.1 Each Class II gaming activity within the jurisdiction of the Tribe shall be conducted only by a gaming operator who possesses a current and valid tribal gaming license.

8.2 Each tribal gaming license shall be applicable only to one gaming site and the gaming operator named on such license.

8.3 No tribal gaming license shall be sold, lent, assigned or otherwise transferred.

8.4 Each management and key employee of a licensed gaming activity shall possess a current and valid tribal gaming employee license.

8.5 A tribal gaming license shall be issued only to a person who qualifies therefor under this Code, or to the Tribe or a tribal subdivision.

8.6 Each gaming operator shall have a copy of this Code and regulations readily available for inspection by any person at each authorized gaming facility or activity.

8.7 Each gaming facility shall post the following in a prominent place in each room where gaming is conducted a sign stating the following:

This facility is regulated by one or more of the following: The National Indian Gaming Commission, the Bureau of Indian Affairs of the United States Department of the Interior and the Government of the Makah Indian Tribe.

This facility is not regulated by the State of Washington.

8.8 Each facility that houses one or more card games shall post, in a prominent place in each card room, the rules of each card game played. These rules shall notify the public of the following:

8.8.1 The maximum rake-off percentage, time buy-in and other fees charged;

8.8.2 The number of raises allowed;

8.8.3 The monetary limit of each raise

8.8.4 The amount of ante; and

8.8.5 Other rules as may be necessary.

8.9 All accounting records of each tribally licensed gaming facility shall be kept on a double entry system of accounting, maintaining detailed, supporting, subsidiary records. The operator and the Tribe shall maintain the following records for not less than three (3) years:

8.9.1 Revenues, expenses, assets, liabilities and equity for each location at which Class II gaming is conducted;

8.9.2 Daily cash transactions for each Class II game at each location at which gaming is conducted, including but not limited to transactions relating to each gaming table

bank, game drop box, and gaming room bank;

8.9.3 All markers, IOU's, returned checks, hold checks or other similar credit instruments;

8.9.4 Individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

8.9.5 Contracts, correspondence and other transaction documents relating to all vendors and contractor's;

8.9.6 Records of all tribal gaming enforcement activities;

8.9.7 All gaming related audits prepared by or on behalf of the Tribe or one of its subdivisions.

8.9.8 Personnel information on all Class II gaming employees or agents including rotation sheets, hours worked, employee profiles and background checks.

8.10 No person under the age of 18 shall be employed as a key employee or primary management official of any gaming activity.

8.11 No person under the age of 14 years shall be permitted to enter the area of any building in which a gaming activity is being conducted.

8.12 A person under the age of 14 years may participate in gaming activity in private homes, purchase raffle tickets, attend sporting contests or ticket drawings, stick game, and other traditional gaming tournaments.

8.13 Each gaming operator shall post in a conspicuous location near where each gaming activity is being played or shall otherwise provide the public with an explanation of the rules of play of every game the gaming operator operates.

8.14 A gaming operator is prohibited from renting or lending gaming equipment to any person without the prior written approval of the Tribal Gaming Commission.

8.15 A gaming operator is prohibited from exchanging pull-tabs, punch-boards, sports pools, and twenty-one boxes (shoes) without the approval of the Tribal Gaming Commission. All other gaming equipment may be exchanged without prior approval. Any request for approval shall be made to the Tribal Gaming Commission at least 5 days prior to the exchange.

8.16 Each gaming operator who anticipates the printing, manufacture, or construction of any equipment for gaming activity shall first notify the Tribal Gaming Commission of the gaming operator's intention and shall have the finished product approved by the Tribal Gaming Commission before it is placed in service.

8.17 Gaming chips and other tokens of value may be sold and redeemed only by the gaming operator and only for full value.

8.18 Every licensed gaming operation shall maintain and keep for not less than 10 years permanent books of accounts and records, including inventory records of gaming supplies, sufficient to establish the gross and net income, deductions, expenses, receipts, and disbursements of the enterprise.

8.19 A gaming operator who conducts a gaming activity at a site in which the operator does not have a legal ownership interest shall file with the Tribal Gaming Commission, prior to conducting any gaming activity at such site, a written agreement, attested to by both the gaming operator and the owner of such site, setting forth the terms under which the operator is permitted the use of such site.

8.19.1 Such agreement shall contain all of the following information:

8.19.1.1 The name of the legal owner of the site. If the gaming operator is to be a sub-lessee, then the name of the lessee must also be included.

8.19.1.2 The name and gaming license number of the gaming operator.

8.19.1.3 The term of such use of the site.

8.19.1.4 The monetary consideration to be paid for such use of the site, if any.

8.19.1.5 A precise description of the location or premises.

8.19.1.6 A prohibition of advertising of the gaming activity by the owner.

8.19.1.7 The following provision:

The (grantor/lessor) hereby agrees that neither (he), (his) spouse, nor any employee or agent of the (grantor/lessor) shall participate in the selling, distributing, conducting, assisting, or participating in gaming activity at the site herein (granted/leased) without the prior written approval of the Tribal Gaming Commission.

8.19.2 Any rent or lease provision of such agreement shall include a fixed monthly rental dollar amount, unless otherwise approved in writing by the Tribal Gaming Commission.

8.19.3 A graduated lease rate for use of the site is prohibited unless approved in writing by the Tribal Gaming Commission.

8.19.4 Other remuneration in lieu of money for use of the site is prohibited unless approved in writing by the Tribal Gaming Commission.

8.19.5 A percentage lease rate for use of the site is prohibited unless approved in writing by the Tribal Gaming Commission.

8.19.6 No game of chance shall be operated in conjunction with the conduct of the grantor's business operation unless approved in writing by the Tribal Gaming Commission.

8.19.7 Any renegotiated agreement shall be submitted to the Tribal Gaming Commission for approval prior to its effective date.

8.20 There shall be no sale of liquor at any gaming site.

8.21 Consideration for the chance to play in any gaming activity shall only be cash or, if allowed by the gaming operator, personal check and shall be presented at the time the game is played. No other form of consideration shall be allowed unless the Tribal Gaming Commission gives prior written approval.

8.22 Evidence of any win or loss incurred by a player must, upon request, be provided to such player in such form as will be acceptable to the IRS.

8.23 Each gaming operator shall pay all fees and file all reports required by law within the time prescribed.

8.24 Each gaming operator shall respond immediately to and obey all inquiries, subpoenas, or orders of the Tribal Gaming Commission, the Tribal Council, the Tribal Court, or the National Indian Gaming Commission.

8.25 Each gaming operator shall prominently display at each gaming site a current, valid tribal gaming license.

8.26 Each gaming operator shall at all times maintain an orderly, clean, and neat gaming facility, inside and out.

8.27 Each gaming operator shall provide adequate security to protect the public before, during, and after any gaming activity.

8.28 Each licensed gaming activity shall be subject to patrol by the tribal police force for the purpose of enforcing tribal law, and each gaming operator shall cooperate at all times with the tribal police force.

8.29 Each gaming operator shall make its premises and books and records available for inspection during normal business hours by the Tribal Gaming Commission and members of the Tribal Council or their designee.

8.30 No gaming shall be conducted on tribal election days, or on any day on which any tribal referendum is held, or on special days of observance designated by the Tribal Council or by the Tribal Gaming Commission.

8.31 No gaming operator may discriminate on the basis of sex, race, color, or creed in the conduct of any licensed gaming activity.

8.32 Each gaming operator shall keep accurate books and records of all moneys received and paid out and provide the Tribal Gaming Commission or its designee with copies of or access to the same upon request.

8.33 All net revenues of any gaming activity shall be used only in a manner prescribed by this Code.

8.34 Every gaming operator shall comply with all applicable tribal and federal revenue reporting laws.

8.35 Each gaming operator shall immediately suspend any employee who is charged with a crime of theft, embezzlement, fraud or other gaming crime, or any offense related to the sale, possession, manufacture, or transport of illegal drugs. The gaming operator shall also immediately notify the Tribal Gaming Commission in writing of the name of the person and the pending charge and advise the Tribal Gaming Commission of the outcome of the case. If the employee is convicted or pleads *nolo contendere* to the charge, the employee's employment shall be terminated.

Section 9. Enforcement.

9.1 Jurisdiction. Except as provided in this Code or in any tribal-state gaming compact under the IGRA, the Tribal Court shall have jurisdiction over all violations of this Code.

9.2 Prohibited Acts. In addition to other civil and criminal offenses provided for in this Code or under other applicable law, the following acts are prohibited and subject any violator to the civil or criminal penalties specified herein:

9.2.1 Knowingly making a false statement in an application for employment with any gaming operator or with the Tribal Gaming Commission.

9.2.2 Knowingly making a false statement in connection with any contract to participate in any gaming activity.

9.2.3 Attempting to bribe any person participating in any gaming activity.

9.2.4 Offering or accepting a loan, financing, or other thing of value between a Tribal Gaming Commission member or employee and any person participating in any gaming activity.

9.2.5 Failing to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid from any gaming activity authorized pursuant to this Code.

9.2.6 Falsifying any books or records which relate to any transaction connected with any gaming activity pursuant to this Code.

9.2.7 Conducting or participating in any gaming activity which in any manner results in cheating or misrepresentation or which allows any other disreputable tactics that detract from the fair nature and equal chance of participation between gaming players, or which otherwise creates an advantage over and above the chance of such gaming activity and which affects its outcome.

9.2.8 To conduct a gaming activity with or to allow participation in a gaming activity by an intoxicated or disorderly player.

9.2.9 To allow or participate in the sale of liquor at gaming sites when such sale is prohibited by tribal law.

9.2.10 To accept consideration other than money, personal checks, or other approved consideration for the chance to play or participate in any gaming activity.

9.2.11 To solicit, directly or indirectly, or to use inside information on the nature or status of any gaming activity for the benefit of any person.

9.2.12 To alter or counterfeit a gaming license.

9.2.13 To aid, abet, or conspire with another person knowingly or knowingly to cause any person to violate any provision of this Code or any rules and regulations adopted hereunder.

9.2.14 To operate, use, or make available to the public any illegal gaming device, apparatus, material, or equipment.

9.2.15 To sell or hold out for sale or transport into or out of the jurisdiction of the Tribe any illegal gaming device, apparatus, material, or equipment.

9.2.16 To assist or allow a person who is under age to participate in any gaming activity.

9.2.17 To possess any illegal narcotics or controlled substances on any licensed gaming site.

9.2.18 To steal or attempt to steal funds or other items of value from any gaming facility or from the Tribal Gaming Commission.

9.2.19 To employ any person at a licensed gaming facility whom the gaming operator knows has been convicted of a gaming crime or a crime of fraud.

9.2.20 To conspire with or induce any person to violate any of the provisions of this Code or any tribal or federal law.

9.2.21 No gaming operator or any of the gaming operator's employees or agents shall engage in any act, practice, or course of operation which could result in a fraud or deceit upon any person.

9.2.22 To use bogus or counterfeit chips or gaming tickets, or to substitute or use any game, cards, gaming tickets, or gaming equipment that have been marked or tampered with.

9.2.23 To employ or have on the Reservation any device to facilitate cheating in any game of chance.

9.2.24 To knowingly use any fraudulent scheme or technique, or to solicit, provide, or receive inside information about any gaming activity with the intent of benefiting any person.

9.2.25 To take, solicit, or encourage any action which undermines the integrity of any game of chance.

9.2.26 No gaming operator shall knowingly employ any person who has been convicted of or entered a plea of *nolo contendere* to a crime of theft, embezzlement, fraud, or other gaming crime.

9.3 Criminal Violation. Any Indian who violates or fails to comply with any provision of this Code, or who fails to comply with any order or decision of the Tribal Gaming Commission, shall be guilty of a crime and shall be required to pay a maximum fine of \$5,000 or one year imprisonment, or both. Each day during which such violation or failure to comply continues, with or without notice, shall constitute a separate violation of this Code.

9.4 Civil Violation. Any person who violates or fails to comply with any provision of this Code, or who fails or neglects to comply with any order of the Tribal Gaming Commission, shall be

liable for a civil fine not to exceed \$5,000 for each violation thereof. Each day during which such violation or failure to comply continues, with or without notice, shall constitute a separate violation of this Code. The amount of any such civil fine may be recovered in a civil action in the Tribal Court.

9.5 Cumulative Fines. All civil fines accruing under this Code shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, judgment, penalty, forfeiture, or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.

9.6 Purpose of Civil Penalties. The civil fines imposed under this Code are intended to be remedial and not punitive, and are designed to compensate the Tribe for the damage done to the peace, security, economy, and general welfare of the Tribe and the Reservation, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Code. The civil fines under this Code are also intended to coerce persons into complying with this Code and Tribal Gaming Commission regulations and not to punish such persons for violation of such laws and regulations.

9.7 Civil Action for Penalties. In enforcing the civil infraction provisions of this Code, the Tribal Gaming Commission shall proceed, in the name of the Tribe, by civil complaint pursuant to the provisions of this Code. The Tribal Gaming Commission in such action shall have the burden of showing, by the preponderance of the evidence, that such person violated the applicable provision of this Code.

9.8 Seizure and Forfeiture of Property. All property utilized in violation of this Code shall be subject to seizure and forfeiture by order of the Tribal Court pursuant to Title I of the Tribal Code.

9.9 Reporting of Offenders. Upon final order of the Tribal Court in any action for criminal or civil violation under this Section, the Clerk of the Tribal Court shall notify the Tribal Gaming Commission in writing of the final court disposition.

Section 10. Operation of Tribally Owned or Tribally Operated Games.

10.1 Management by a General Manager.

10.1.1 The Tribal Council may appoint one person to serve as General Manager of each tribally owned or tribally operated gaming facility. Each General Manager shall undergo a background check by the Tribal Gaming Commission and shall obtain an employee gaming license before commencing work. The Tribal Gaming Commission shall be the direct supervisor of the General Manager. However, the Tribal Council shall retain the authority to suspend or dismiss the General Manager as it deems necessary.

10.1.2 The General Manager shall be responsible for managing and overseeing the day-to-day operations of the gaming operation. The General Manager shall have such authority as the Tribal Gaming Commission may delegate.

10.1.3 The General Manager shall provide a written monthly report to the Tribal Gaming Commission which details the number of patrons served, the amount of income generated, the numbers of employees working at the facility, a detailed description of any patron complaints and other problems experienced at the facility, and a written statement of any changes in key employees or primary management officials and all bills which are 30 days or more past due.

10.1.4 The General Manager shall be personally responsible for seeing that all gaming activities are managed in accordance with tribal and federal law and that all gaming activities comply with all IRS reporting requirements.

10.2 Patron Disputes (25 CFR § 522.2(f)).

10.2.1 **Applicability.** These dispute resolution procedures shall apply to all tribally licensed gaming on Makah Indian lands and shall be used to resolve patron disputes between the gaming public and the Tribe or the management contractor.

10.2.2 **Refusal to Pay Winnings.** Whenever a tribally licensed gaming enterprise refuses payment of alleged winnings to a patron, and the manager of that facility and the patron are unable to resolve the dispute to the satisfaction of the patron, and the dispute involves:

10.2.2.1 At least \$500, the manager shall immediately notify the Tribal Gaming Commission. The Commission shall conduct whatever investigation it deems necessary and shall determine within ten days of notification whether payment should be made; or

10.2.2.2 Less than \$500, the manager shall inform the patron of the patron's right to request that the Tribal Gaming Commission conduct an investigation and the fact that the patron must request an investigation within five days of the payment refusal. Upon receipt of such a request, the Tribal Gaming Commission shall conduct whatever investigation it deems necessary and shall determine within seven days whether payment should be made.

10.2.3 **Notice to Patrons.** The Tribal Gaming Commission shall mail written notice by certified mail, return receipt requested, to the general manager and the patron of the

decision resolving the dispute. If the dispute results from an equipment malfunction or violation of an operations procedure, the general manager shall immediately correct the problem or disable the equipment. In addition, the general manager shall notify the Tribal Gaming Commission within five working days of the steps that have been taken to ensure that a similar problem does not occur in the future.

10.2.4 Effective Date of Decision. The decision of the Tribal Gaming Commission is effective on the date it is received by the aggrieved party, as reflected on the return receipt.

10.2.5 Review of Decision. Within 20 days after the date of receipt of the written decision, the aggrieved party may file a petition with the Tribal Gaming Commission requesting a review of the decision. The Tribal Gaming Commission may set a hearing on the matter or may make a decision based upon the prior decision and the other documentation provided to it by the patron and the general manager as part of the request for review. The Commission shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in section 10.2.3 above. The decision of the Commission shall be final and binding upon the patron and general manager and shall not be subject to judicial review, dispute resolution, or other legal action.

10.3 Use of Net Revenues of Tribally Owned or Tribally Operated Gaming Activities.

10.3.1 All net revenues of a tribally owned or tribally operated gaming activity shall be held in the name of the Tribe. Such net revenues may only be expended by the Tribal Council by resolution and only for the following purposes:

10.3.1.1 To fund tribal government operations or programs.

10.3.1.2 To provide for the general welfare of the Tribe and its members.

10.3.1.3 To promote tribal economic development.

10.3.1.4 To donate to charitable organizations.

10.3.1.5 To help to fund operations of local government agencies.

10.4 Maintenance of Records. The Tribal Gaming Commission shall insure that all accounting records of each tribally licensed gaming facility is kept on a double entry system of accounting, maintaining detailed, supporting, subsidiary records. The Tribal Gaming Commission shall also insure that both the operator and the Tribal Gaming Commission maintain the following records for not less than three (3) years:

10.4.1 Revenues, expenses, assets, liabilities and equity for each location at which Class II gaming is conducted;

10.4.2 Daily cash transactions for each Class II game at each location at which gaming is conducted, including but not limited to transactions relating to each gaming table bank, game drop box, and gaming room bank;

10.4.3 All markers, IOU's, returned checks, hold checks or other similar credit

instruments;

10.4.4 Individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

10.4.5 Contracts, correspondence and other transaction documents relating to all vendors and contractors;

10.4.6 Records of all tribal gaming enforcement activities;

10.4.7 All gaming related audits prepared by or on behalf of the Tribe or one of its subdivisions.

10.4.8 Personnel information on all Class II gaming employees or agents including rotation sheets, hours worked, employee profiles and background checks.

10.5 Audit Requirements.

10.5.1 The Tribal Gaming Commission and the General Manager of each tribally owned or tribally operated gaming activity shall obtain an annual independent audit of such gaming activity. A copy of such audit shall be provided to the Tribal Gaming Commission, the Tribal Council, and the National Indian Gaming Commission.

10.5.2 Each contract for supplies, services (other than legal and accounting services) or concessions for a contract amount in excess of \$25,000 annually shall be subject to an independent audit. A copy of such audit will be provided to the Tribal Gaming Commission, the Tribal Council, and the National Indian Gaming Commission.

10.6 Management Contracts.

10.6.1 Each management contract shall fully comply with and is subject to the prior approval of the National Indian Gaming Commission.

10.6.2 Before submission to the National Indian Gaming Commission, each management contract shall be approved by the Council with the advice and comment of the Tribal Gaming Commission. Before giving final consideration to any proposed management contract, the Council shall direct the Tribal Gaming Commission to conduct a complete background investigation of persons and entities with a financial interest in, or having management responsibility for, the management contract, including requiring the submission of all information required under 25 C.F.R. § 537.1, as amended, incorporated herein by this reference.

10.6.2.1 Background information on the proposed management contractor including: its name, its address, the names and addresses of each person or entity having a direct financial interest or management responsibility for the proposed management contractor, and in the case of a corporation the names and addresses of each member of its board of directors and all stockholders who hold directly or indirectly 10 percent or more of its issued or outstanding stock.

10.6.2.2 A description of any previous experience that each person listed in subsection 10.6.2.1 above has had with other gaming contracts with Indian tribes or with any gaming activity or operation wherever located, including the name and address of any tribal government or licensing agency with which such person has had a contract, license, or other agreement or permit relating to gaming.

10.6.2.3 A complete financial statement of each person listed in subsection 10.6.2.1 above.

10.6.2.4 The Tribal Gaming Commission shall contact each of the tribal government and licensing agencies in subsection 10.6.2.2 to determine the performance history of the proposed management contractor.

10.6.2.5 The Tribal Gaming Commission shall arrange to have each proposed management contractor investigated to learn of the proposed management contractor's personal attributes and to determine whether the proposed management contractor has a prior criminal record or any pending criminal charges.

10.6.2.6 The Tribal Gaming Commission shall obtain an independent verification of the completed financial statements of the proposed management contractor.

10.6.2.7 The Tribal Gaming Commission shall undertake any additional steps it can to determine the character and reputation of the proposed management contractor and each person listed in subsection 10.6.2.1.

10.6.2.8 If the Tribal Council, after reviewing the above described information, still desires to enter into a management contract with the proposed management contractor, such management contract shall be made in writing and submitted to the Tribe's attorneys for review.

10.6.3 Any management contract approved by the Council must include at a minimum with respect to the gaming activity to which the contract is applicable, all of the required provisions contained in 25 C.F.R. § 531.1, as amended, incorporated herein by this reference.

10.6.4 All persons who possess an ownership interest or management position in the proposed management contract shall apply for a gaming employee license under this Code. No management contract shall be approved by the Council until all gaming employee license applications have been reviewed and the Tribal Gaming Commission has submitted written findings on such application to the Council.

10.6.5 If the Council is satisfied with the information it receives it shall submit the proposed contract along with all of the above described information to the Chairman of the National Indian Gaming Commission for approval.

10.7 Additional Requirements for Operation of Tribally Owned or Tribally Operated Games.

10.7.1 Any cash winning of an amount under \$500 shall be paid in cash or check and shall be paid on the date it is won. Each patron's winnings of an amount over \$500 shall be

paid by check and shall be paid within 72 hours after it is won.

10.7.2 Each tribally owned or tribally operated gaming facility shall carry sufficient liability insurance to protect the public in the event of an accident. The Tribal Gaming Commission shall determine the amount of liability insurance required for each gaming facility.

10.7.3 Each tribally owned or tribally operated gaming activity shall post the rules of play of each game in a conspicuous place where gaming is conducted and shall make written copies of such rules available to any member of the general public upon request.

Section 11. Authorized Games.

Consistent with applicable law, the Tribe authorizes the licensing of any game of chance defined as or determined to be Class II gaming under section 4 of the Indian Gaming Regulatory Act of 1988, as amended, and regulations duly promulgated thereunder, including, but not limited to, the game of chance commonly known as bingo, pull tabs, lotto and card games that are explicitly authorized by the State of Washington, or are not explicitly prohibited by such laws and are played at any location in the State.

Section 12. Severability.

In the event that any section or provision of this Code is held invalid, it is the intent of the Tribal Council that the remaining sections or provisions of this Code shall continue in full force and effect.

Section 13. Repealer.

All prior gaming codes, ordinances, and resolutions of the Tribe are hereby repealed.

Section 14. Effective Date.

This Code shall be effective upon the date of approval by the Chairman of the National Indian Gaming Commission.

map:April 22, 1996
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