



November 19, 2004

Ms. Marthalene Interpreter-Baylish
Executive Director
San Carlos Apache Tribal Gaming Commission
P.O. Box 1300
San Carlos AZ 85550

Re: Approval of San Carlos Apache tribal gaming ordinance amendments

Dear Director Interpreter-Baylish:

This is in response to your October 1, 2004, letter seeking review and approval of the amendments to the San Carlos Apache Tribe's gaming ordinance, enacted pursuant to Tribal Council Resolution SEP-04-173. The amendments conform the ordinance to the Tribe's recently amended compact with the State of Arizona and are hereby approved.

Thank you very much for your submission. If you have any questions or require further assistance, please contact Michael Gross, Staff Attorney, at 202-632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip N. Hogen".

Philip N. Hogen
Chairman

SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA

OCT - 4 2004

RESOLUTION

NO: SEP-04-173

- WHEREAS, The San Carlos Apache Tribe is a Federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934, (48 Stat, 984); and
- WHEREAS, The San Carlos Apache Tribe is a sovereign Indian Tribe committed to fostering its own self-determination; and,
- WHEREAS, The San Carlos Apache Tribal Council is entrusted with the constitutional responsibility to manage all tribal economic affairs and enterprises in accordance with the terms of the Corporate Charter of the Tribe; and,
- WHEREAS, The Tribal Gaming Ordinance Committee, composed of members of the Tribal Gaming Enterprise and members of the Tribal Gaming Commission, have worked together to revise the Tribal Gaming Ordinance at the request of the Tribal Council in order to ensure compliance with Tribal Law and the Tribal-State Gaming compact; and,
- WHEREAS, The Tribal Gaming Ordinance Committee has concluded its efforts and presented a Revised Tribal Gaming Ordinance to the Tribal Council; and,
- WHEREAS, The Tribal Council has the authority to enact Ordinances for the purpose of regulating activities related to its gaming enterprise; and,
- WHEREAS, The Tribal Council accepts and endorses the Revised Tribal Gaming Ordinance;
- NOW, THEREFORE BE IT RESOLVED THAT: The Tribal Council repeals any and all earlier editions of the Tribal Gaming Ordinance of the San Carlos Apache Tribe and the Tort Remedies Ordinance; and,
- BE IT FURTHER RESOLVED THAT: The Tribal Gaming Ordinance of the San Carlos Apache Tribe, which was revised August 2004, shall be recognized as Appendix B of the Tribal-State Gaming Compact; and,
- BE IT FINALLY RESOLVED THAT: Pursuant to Article V, Section 1(m) of the Amended Constitution, the Tribal Council hereby adopts the Tribal Gaming Ordinance of the San Carlos Apache Tribe, which was revised August 2004, and shall be placed into a new Chapter of the Tribal Law & Order Code.

CERTIFICATION

I, the undersigned Secretary of the San Carlos Apache Tribal Council hereby certify that the Tribal Council is presently composed of 11 members, of whom 8 constituting a quorum were present at a Special Council Meeting hereto held on the 14th day of September 2004, and that the foregoing Resolution No. SEP-04-173 was duly adopted by a vote of 7 for; 0 opposed 0 abstained; of the Tribal Council pursuant to Article V, Section 1 (a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe effective February 24, 1954.


Ophelia T. James, Tribal Secretary
SAN CARLOS APACHE TRIBAL COUNCIL

Tribal Gaming Ordinance
of the
San Carlos Apache Tribe

Revised August 2004

Per Resolution SEP-04-173

San Carlos Apache Tribal Gaming Ordinance

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In acknowledgement of the effort and contributions made
by the members of the Tribal Gaming Ordinance Committee:

William Belvado, Harding Burdette, Bernadette Goode, Myron Moses, Ned Anderson, Sr.,
Raleigh Thompson, John Bush, Richard Lobdell, Terry Rambler, Abner Upshaw, Ronald Boni,
Harold Nofchissey, Ama Ortiz, Wilson Stanley, Marthalene Interpreter-Baylish, Maria Stevens,
Lee Randall, Karen Braswell, Wilkie Nash, Ricardo Sneezy, Steve Titla, Kevin Parsi, and Diana
Lopez.

TRIBAL GAMING ORDINANCE

CHAPTER I

DEFINITIONS

Section 1.01 Definitions. Unless a different meaning is clearly indicated, the terms used in this Ordinance shall have the same meaning as defined in the "Indian Gaming Regulatory Act," Public Law 100 §497, 102 Stat. 2467, codified at 25 U.S.C. §§ 2701 et. seq. (Oct. 17, 1988).

Section 1.02 "Calendar Year" means the period beginning on the first day of January at 12:00:01 and ending the immediately following December 31 at 12:00 o'clock midnight.

Section 1.03 "Chairman" means the Chairman of the National Indian Gaming Commission.

Section 1.04 "Charter" means the San Carlos Apache Tribal Gaming Enterprise Charter.

Section 1.05 "Class I Gaming" means:

- A. Social games played solely for prizes of minimal value; or
- B. Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

Section 1.06 "Class II Gaming" means:

- A. Bingo or lotto (whether or not electronic, computer, or other technological aids are used) when players:
 - 1. Play for prizes with cards bearing numbers or other designations;
 - 2. Cover numbers or designation when object, similarly numbered or designated, are drawn or electronically determined;
 - 3. Win the game by being the first person to cover a designated pattern on such cards;
- B. If played in the same location as bingo or lotto, pulltabs, punch boards, tip jars, instant bingo, and other games similar to bingo;
- C. Nonbanking card games that:
 - 1. State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and

2. Players play in conformity with state laws and regulations concerning hours, periods of operation and limitations on wagers and pot sizes;

Section 1.07 "Class III Gaming" means all forms of gaming that are not Class I gaming or Class II gaming, including but not limited to:

- A. Any house banking game including but not limited to:
 1. Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
 2. Casino games such as roulette, craps, and keno;
 3. Poker and jackpot poker as defined in the Memorandum of Understanding between the State of Arizona and the San Carlos Apache Tribe (signed December 4, 2002.)
- B. Any slot machines as defined in 15 U.S.C. 1171 (a) (1) and electronic or electromechanical facsimiles of any game of chance;
- C. Any sports betting and parimutuel wagering including, but not limited to, wagering on horse racing, dog racing, or jai alai; or
- D. Lotteries.

Section 1.08 "Collateral agreement" means any contract, whether or not in writing, that is related, either directly or indirectly, to a Management Contract or to any rights, duties or obligations created between a Tribe (or any of its members, entities, or organizations) and a Management Contractor or subcontractor (or any person or entity related to a Management Contractor or subcontractor).

Section 1.09 "Director" means the Director of the San Carlos Apache Tribal Gaming Commission appointed by the Tribal Council.

Section 1.10 "Electronic, computer or other technological aid" means a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used:

- A. is not a game of chance but merely assists a player or the playing of a game;
- B. is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and
- C. is operated according to applicable Federal communications law.

Section 1.11 "Electronic or electromechanical facsimile" means any gambling device as defined in 15 U.S.C. 1171 (a)(2) or (3).

Section 1.12 "Enterprise" means the San Carlos Apache Tribal Gaming Enterprise authorized to conduct Gaming Activities on the Reservation.

Section 1.13 "Gaming Activities" means all forms of Class I, Class II or Class III Gaming conducted within the San Carlos Apache Tribe Reservation.

Section 1.14 "Game similar to Bingo" means any game that meets the requirements for bingo under 25 CFR §502.3 (a) and that is not a house banking game under 25 CFR §502.11.

Section 1.15 "Gaming Employee" means any person employed as a Primary Management Official or Key Employee of a Gaming Facility Operator and any person employed in the operation or management of a Gaming Facility Operator, including, but not limited to, any person whose employment duties require or authorize access to restricted areas of a Gaming Facility not otherwise open to the public.

Section 1.16 "Gaming Device" means a mechanical device, an electromechanical device or a device controlled by an electronic microprocessor or another manner, whether that device constitutes Class II Gaming or Class III Gaming, that allows a player or players to play games of chance, whether or not the outcome also is affected in some part by skill, and whether the device accepts coins, tokens, bills, coupons, ticket vouchers, pull tabs, smart cards, electronic in-housing accounting system credits or other similar forms of consideration and, through the application of chance, allows a player to become entitled to a prize, which may be collected through the dispensing of coins, tokens, bills, coupons, ticket vouchers, smart cards, electronic in-house accounting system credits or other similar forms of value. Gaming Device does not include any of the following:

- A. Those technological aids for bingo games that function only as electronic substitutes for bingo cards.
- B. Devices that issue and validate paper lottery products and that are directly operated only by Arizona State Lottery licensed retailers and their employees.
- C. Devices that are operated directly by a lottery player and that dispense paper lottery tickets, if the devices do not identify winning or losing lottery tickets, display lottery winnings or disburse lottery winnings.
- D. Devices that are operated directly by a lottery player and that validate lottery tickets for a game that does not have a predetermined number of winning tickets, if:
 1. The devices do not allow interactive gaming;
 2. The devices do not allow a lottery player to play the lottery for immediate payment or reward;
 3. The devices do not disburse lottery winnings; and
 4. The devices are not Video Lottery Terminals.
- E. Player Activated Lottery Terminals.

Section 1.17 "Gaming Facility" means the buildings or structures in which Class II or Class III Gaming is conducted.

Section 1.18 "Gaming Facility License" means a license issued by the Tribal Gaming Commission allowing gaming operations to occur at a Gaming Facility.

Section 1.19 "Gaming Facility Operator" means the Tribe, an enterprise owned by the Tribe, or such other entity of the Tribe as the Tribe from time to time designate by written notice to the State of Arizona as the Tribal entity having full authority and responsibility for the operation and management of Class II and III Gaming Activities.

Section 1.20 "Gaming License" means a license issued by the Tribal Gaming Commission permitting a person to be employed as an employee at a Gaming Facility.

Section 1.21 "Gaming Regulatory License" means a license issued pursuant to this Ordinance by the San Carlos Apache Tribe Law & Order Committee, or its designee, to an employee of the Tribal Gaming Commission.

Section 1.22 "House banking game" means any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win.

Section 1.23 "Indian" means an individual who is an enrolled member of a federally recognized Indian Tribe, band, nation or other organized group of community of Indians recognized by the Secretary of the Interior.

Section 1.24 "Indian Lands" means:

- A. Land within the limits of an Indian reservation; or
 - 1. Land over which an Indian tribe exercises governmental power and that is either:
 - a. Held in trust by the United States for the benefit of any Indian tribe or individual; or
 - b. Held by an Indian tribe or individual subject to restriction by the United States against alienation.

Section 1.25 "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as –

- A. Eligible for the special programs and services provided by the United States to Indians because of their status as Indians and
- B. Having powers of self-government.

Section 1.26 "Just Cause" means a legally sufficient reason based on reasonable grounds; such reasons as will suffice in law to justify the action taken; fair, adequate, reasonable cause.

Section 1.27 "Key employee" means:

- A. A person who performs one or more of the following functions:
 - 1. Bingo caller;
 - 2. Counting Room Supervisor;
 - 3. Chief of Security;
 - 4. Custodian of gaming supplies or cash;
 - 5. Floor manager;
 - 6. Pit boss;
 - 7. Dealer;
 - 8. Croupier;
 - 9. Custodian of gambling devices including persons with access to cash and accounting records within such devices;
- B. If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or
- C. If not otherwise included, the four most highly compensated persons employed by the Gaming Facility Operator.

Section 1.28 "Management contract" means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

Section 1.29 "National Indian Gaming Commission" means the Commission as approved by Congress pursuant to the Indian Gaming Regulatory Act.

Section 1.30 "Net Revenues" means gross gaming revenues of a Gaming Facility Operator less:

- A. Amounts paid out as, or paid for, prizes; and
- B. Total gaming-related operating expenses, excluding management fees.

Section 1.31 "Ordinance" means the Tribal Gaming Ordinance of the San Carlos Apache Tribe originally adopted on January 18, 1994 and as may be amended from time to time by the San Carlos Apache Tribal Council.

Section 1.32 "Primary Management Official" means

- A. Any person who has authority:
 - 1. To hire and fire employees; or
 - 2. To set up working policy for the gaming operation;
- B. The chief financial officer or other person who has financial management responsibility.

Section 1.33 "Regulations" means the Regulations for the San Carlos Apache Tribal Gaming Commission (Gaming Commission Policies and Regulations, or, "GCPRs")

Section 1.34 "Reservation" means the San Carlos Apache Reservation.

Section 1.35 "Secretary" means the Secretary of the Interior.

Section 1.36 "Tribal-State Compact" means an agreement between a tribe and a state about Class III gaming under 25 U.S.C. 2710(d).

Section 1.37 "Tribal Gaming Commission or Commissioners" means the San Carlos Apache Tribal Gaming Commissioners, who are appointed by the San Carlos Apache Tribal Council to exercise the civil regulatory authority of the Tribe over Gaming Activities.

Section 1.38 "Tribe or Tribal" means the San Carlos Apache Tribe.

Section 1.39 "Tribal Council" means the San Carlos Apache Tribal Council.

Section 1.40 "Tribal Court" means the San Carlos Apache Tribal Court system, including the San Carlos Court of Appeals.

Section 1.41 "Words and Terms" Tense, number, and gender. In constructing the provisions of this Ordinance, except as otherwise plainly declared or clearly apparent from the context;

- A. words in the present tense shall include the future tense;
- B. words in masculine, feminine and neuter genders shall include all genders;
- C. words in the singular shall include the plural, and in the plural shall include the singular.

Section 1.42 "Working Days" means Monday through Friday except for Federal or Tribal holidays.

CHAPTER II

DECLARATION OF POLICY AND PURPOSE

Section 2.01 Purpose. The San Carlos Apache Tribe, empowered by its inherent sovereignty, Constitution, and Bylaws to enact ordinances, hereby enacts this Tribal Gaming Ordinance in order to set the terms for Gaming Activities that occur on the Reservation.

Section 2.02 Gaming Authorized. Class II gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2703 (7) (a) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. § 502.3 (as published in the Federal Register at 57 CFR 12382-12393, April 9, 1993) is hereby authorized. Additionally, all forms of Class III gaming set forth in the Tribal-State Compact between the Tribe and the State of Arizona dated December 4, 2002 are authorized.

Section 2.03 Ownership – Revenues to Benefit Tribe. The Tribe shall have the sole proprietary interest in, and the sole responsibility for, the conduct of Gaming Activities performed at authorized Gaming Facilities on the Reservation. Such provision does not, however, limit the Tribe's ability to enter into a Management Contract wherein net profits are divided between the Tribe and other parties to the contract. A Gaming Facility shall be operated so as to produce the maximum amount of net profit to the Tribe. The Tribe's share of Net Revenues will go entirely to the Tribe and will be used solely for the following purposes:

- A. to fund tribal government operations or programs;
- B. to provide for the general welfare of the Tribe and its members;
- C. to promote tribal economic development;
- D. to donate to charitable organizations; or
- E. to help fund operations of local government agencies. Net Revenues from a Gaming Facility may be used to make per capita payments to members of the Tribe upon the preparation of a plan to allocate revenues to the above uses and approval of this plan by the Secretary.

CHAPTER III

ADMINISTRATION AND ENFORCEMENT

Section 3.01 Unauthorized Gaming. Any Indian who commits any act of unauthorized gaming on the Reservation shall be guilty of a crime, pursuant to the San Carlos Apache Tribal Law & Order Code and shall be prosecuted in Tribal Court. Prosecution for such a crime in Tribal Court is not meant to be exclusive; a finding of guilt or innocence shall not deprive the federal government from criminal jurisdiction. However, it is hereby declared that Class I, Class II, and Class III gaming conducted on the Reservation that fully complies with the provisions of this Ordinance shall not be subject to any criminal penalties.

Section 3.02 Establishment of Tribal Gaming Commission. The San Carlos Apache Tribal Gaming Commission is hereby established. The Tribal Gaming Commission shall consist of five (5) members (hereinafter "Tribal Gaming Commission") appointed by a majority vote of the Tribal Council. A Tribal Gaming Commissioner shall serve for three (3) years and may be removed from the Commission prior to the end of his term only for just cause and by a majority vote of Tribal Council following a public hearing. Tribal Gaming Commissioners shall undergo a background investigation and receive a Gaming Regulatory License, which, upon issuance, will be effective during the entire term of their appointment. In order to establish an annually staggered Tribal Gaming Commission appointment schedule similar to that of the Tribal Council, the first Tribal Gaming Commissioners shall be appointed by the Tribal Council as follows: one (1) member shall serve a three (3) year term; two (2) members shall serve (2) year terms; and two (2) members shall serve a one (1) year term for the initial appointment terms only. Thereafter, all successive terms of appointment shall run for three (3) years. Vacancies on the Tribal Gaming Commission shall be filled by appointment of the Tribal Council within thirty (30) days of such vacancy.

Section 3.03 Restrictions on Tribal Gaming Commissioners. Tribal Gaming Commissioners may hold other Tribal positions and may engage in business, provided, however, that they shall not engage in any business which is subject to the provisions of this Ordinance. Tribal Gaming Commissioners shall not gamble in the Gaming Facility nor have any personal financial interest in any gambling by any patron. In addition, no employee of a Gaming Facility Operator shall be employed by or be a member of the Tribal Gaming Commission.

Section 3.04 Compensation for Tribal Gaming Commissioners. Tribal Gaming Commissioners shall be compensated at a rate to be established annually by the Tribal Gaming Commission, and approved by the Tribal Council. Tribal Gaming Commissioners shall be reimbursed for actual expenses incurred on Tribal Gaming Commission business, including necessary travel expenses. In no event shall compensation be based on a percentage of net profits from gaming operations of the Tribe.

Section 3.05 Selection of Chairperson and Vice-Chairperson. The Tribal Gaming Commission shall select annually from its membership a chairperson and vice-chairperson.

Section 3.06 Meetings Open to Public. General meetings of the Tribal Gaming Commission may be open to the general membership of the San Carlos Apache Tribe and all meetings shall be governed by Roberts Rules of Order. Upon a majority vote as defined in Section 3.07, matters dealing with personnel, security or the fiscal integrity of the Tribal Gaming Commission shall be conducted in executive session and not be open to the public.

Section 3.07 Quorum - Majority Vote. A quorum shall consist of three (3) members of the Tribal Gaming Commission. All decisions shall be made by a majority vote of the Tribal Gaming Commissioners, unless indicated otherwise in this Ordinance.

Section 3.08 Monthly Report. The Tribal Gaming Commission shall make monthly reports to the Tribal Council within thirty (30) days after the close of the month. The report shall include a full and complete statement of gaming revenues paid to the Tribe, expenses, and all other financial transactions of the Tribal Gaming Commission and a summary of all licensing and enforcement actions.

Section 3.09 Powers. The Tribal Gaming Commission shall exercise any proper power and authority necessary to perform the duties assigned to it by this Ordinance. Proper power and authority includes, but is not limited to, the following responsibilities:

- A. The Tribal Gaming Commissioners shall meet with the Director not less than once each month to make recommendations and set policy, approve or reject reports of the Director, and transact other business that may be properly brought before it.
- B. The Tribal Gaming Commission shall promulgate rules and Regulations for the operation of any Gaming Facility, subject to the requirements set forth in Section 3.10, and shall hear and resolve all disputes regarding any provision of this Ordinance.
- C. In all decisions, the Tribal Gaming Commission shall act to promote and ensure the integrity, security, honesty, and fairness of the operation and administration of gaming and ancillary activities of the gaming operation.
- D. The Tribal Gaming Commission shall have the power and authority to approve or deny any application, and/or to limit, condition, suspend, or restrict any license.
- E. The Tribal Gaming Commission may impose a fine on any individual and/or entity that violates the Tribal-State Compact, this Ordinance, or any Regulation.
- F. The Tribal Gaming Commission, through such agents or employees as determined by the Director, shall have the power and duty to detain individuals who may be

involved in illegal activities, for purposes of notifying and summoning appropriate law enforcement authorities.

Section 3.10 Amendments. All provisions of this Ordinance are subject to amendment by the Tribal Council. The Gaming Commission is empowered to adopt, amend and repeal Regulations, subject to final approval by the Tribal Council. Regulations shall be adopted, amended or repealed in accordance with the following procedures:

- A. At least 14 days before the initial meeting of the Tribal Gaming Commission and 5 days before any subsequent meeting at which the adoption, amendment or repeal of a Regulation is considered, notice of the proposed action must be:
 1. Published in such locations as the Tribal Gaming Commission prescribes;
 2. Mailed to every person who has filed a request with the San Carlos Tribal Gaming Commission;
 3. When the Tribal Gaming Commission deems advisable, mailed to any person or entity whom the Tribal Gaming Commission believes would be an interested party in the proposed action;
- B. The notice of the proposed adoption, amendment or repeal must include:
 1. A statement of the time, place and nature of the proceedings for adoption, amendment or repeal;
 2. Reference to the authority under which the action is proposed;
 3. Either the express terms or an informative summary of the proposed action.
- C. The Tribal Gaming Commission shall afford any interested persons or entities or such authorized representatives of any persons or entities, the opportunity to present statements, arguments or concerns to the Tribal Gaming Commission. The Tribal Gaming Commission shall consider all relevant matters presented to it before adopting, amending or repealing any Regulation.
- D. Any interested member of the Tribe or Gaming Operation may file a petition with the Tribal Gaming Commission requesting adoption, amendment or repeal of a Regulation. The petition must state, clearly and concisely:
 1. The substance or nature of the Regulation, amendment or repeal requested;
 2. The reasons for the request; and
 3. Reference to the authority of the Tribal Gaming Commission to take the action being requested;
 4. Upon receipt of the petition, the Tribal Gaming Commission shall within 30 days deny the request in writing or schedule the matter for action pursuant to this subsection.
- E. In any hearing regarding adoption, amendment, or repeal of a Regulation, the Tribal Gaming Commission or its duly authorized representative shall conduct such hearings in a manner designed to preserve due process and provide a full and fair review. The Tribal Gaming Commission may establish and direct its own administrative procedures for conducting such hearings as follows:

1. The Tribal Gaming Commission may administer oaths or affirmations;
 2. The Tribal Gaming Commission may continue or postpone the hearing from time to time and such places as it prescribes.
 3. As set forth below , any decision by the Tribal Gaming Commission may be appealed to the Tribal Council. Such appeal must be in writing and submitted to the Tribal Council and Tribal Gaming Commission within 10 business days from receipt of the decision by the Tribal Gaming Commission.
- F. The Tribal Gaming Commission shall forward to the Tribal Council any action to repeal, adopt or amend any Regulation pursuant to this Ordinance. In addition, as set forth under Section E above, any interested party may appeal the adoption, amendment or repeal of a gaming regulation to the Tribal Council. The Tribal Council may summarily adopt, revise or deny such action. Except as provided under Section G below, no Regulation will be final and/or enforceable until the Tribal Council has acted upon such Regulation.
- G. In emergencies, the Tribal Gaming Commission may summarily adopt, amend or repeal any Regulation affecting Class III gaming, without the necessity of immediate Tribal Council approval, if, at the same time, it files a finding that such action is necessary for the immediate preservation of the public peace, health, safety, or general welfare, together with a statement of the facts constituting the emergency. In such matters, the Tribal Gaming Commission shall notify the General Manager of the Gaming Facility Operator, Chairperson of the Enterprise Board and the Tribal Council of emergency action taken pursuant to this section. Any interested party may petition to the Tribal Gaming Commission to amend or repeal any action taken pursuant to this section. Further, any interested party may appeal any action taken pursuant to this section to the Tribal Council and the Tribal Council may summarily adopt, revise or deny the action in question.

Section 3.11 Voting on Licensing.

- A. Any Tribal Gaming Commission vote resulting in approving, disapproving, revoking, suspending, limiting or conditioning a license under this Ordinance shall be by ballot or voice vote; provided that in an emergency a phone voice vote may be polled pursuant to the Regulations. Should an applicant disagree with the decision of the Tribal Gaming Commission, the Tribal Gaming Commission shall hold a hearing to review its decision, within ten (10) Working Days from the date an applicant files his/her disagreement with the Tribal Gaming Commission. At the hearing, the burden shall be on the applicant to show cause why the Tribal Gaming Commission's decision was incorrect. Following such hearing, the Tribal Gaming Commission shall, within ten (10) Working Days reach a decision concerning:
1. the accuracy of the preliminary certification of facts; and

2. whether the license in question should be granted, continued, suspended, revoked, conditioned, or limited;
 3. whether or not any other action recommended to the Tribal Gaming Commission including, but not limited to forfeitures, should be taken.
- B. Notification of Tribal Gaming Commission Decision. Within five (5) Working Days following this decision, the Tribal Gaming Commission shall inform the subject in writing of that decision.
- C. Right to Appeal.
1. Unless otherwise contractually agreed to, the subject shall have the right to appeal the decision of the Tribal Gaming Commission to the Tribal Court system.
 2. Such appeal must be filed with the Tribal Court in written form on or before the tenth (10th) day following receipt of the written decision of the Tribal Gaming Commission.
 3. In any case which is appealed to the Tribal Court system for final action, the judiciary's decision shall be final and binding.

Section 3.12 Appointment of Director. The Tribal Council, with the advice and consent of the Tribal Gaming Commission, shall appoint a Director who shall be responsible for the day-to-day management of the affairs of the Tribal Gaming Commission as well as overseeing the establishment and operation of all Gaming Activities. A detailed background investigation shall be conducted on the Director before his appointment and the Tribal Gaming Commission shall maintain oversight of the Director on an ongoing basis. Preference will be given to applicants with experience in legal gaming or law enforcement. No one convicted of a felony of any kind or misdemeanor related to illegal gambling or bribery can serve as Director. The Director shall not have any personal interests in any Gaming Activities. The Director may not gamble in the Gaming Facility nor have any personal financial interest in any gambling by any gambling establishment patron.

Section 3.13 Director's Contract. The Director shall be hired per an employment contract for up to two years. Any additional terms of the contract will be negotiated with the Tribal Gaming Commission and approved by the Tribal Council. Compensation for the Director shall not be based, in whole or in part, on the profitability of the gaming operation.

Section 3.14 Disciplinary Action and Termination. The Director shall be terminated immediately upon his/her conviction in a federal or state court of competent jurisdiction for any felony or for any misdemeanor related to illegal gambling or bribery or upon conviction in any court of any charge that the Tribal Gaming Commission determines affects his/her honesty or ability to fulfill his/her duties.

If the Director is found to have violated any part of this Ordinance, he/she shall be immediately

terminated for inadequate performance of the duties required to be performed or may additionally be terminated for associations or conduct that would tend to bring the Tribe into disrepute. All employment decisions related to the Director shall be decided by the Tribal Gaming Commission.

Section 3.15 Duties of Director. The Director shall, subject to the approval of the Tribal Gaming Commission, perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes of this Ordinance relating to the regulation of all gaming activity. In all decision(s), the Director shall act to promote and ensure the integrity, security, honesty, and fairness of the operation and administration of all gaming activity. The Director's duties shall include, but not be limited to, the following:

- A. Negotiating contracts for payments by the Tribe for the provision of security and other professional services. Such contracts must be approved by the Tribal Gaming Commission and the Tribal Council and shall not constitute a waiver of jurisdiction by the Tribe;
- B. Correspond with the National Indian Gaming Commission and do whatever is necessary to achieve compliance with the rules and regulations of that agency. Specifically, the Director shall arrange for an annual outside audit of authorized gaming and will provide a copy to the National Indian Gaming Commission.
- C. The Director will assure that all Gaming Activities are conducted in a manner that adequately protects the environment and the public's health and safety.
- D. The Director will ensure that background investigations are conducted pursuant to section 4.13 on all Primary Management Officials and Key employees of any Gaming Facility and that oversight of such officials and their management is conducted on an ongoing basis. The Director will recommend to the Tribal Gaming Commission, which shall have final authority, on the granting of Tribal Gaming Licenses for Primary Management Officials and Key employees. The Director shall immediately notify the National Indian Gaming Commission of the issuance of such Gaming Licenses. The Director will review all applications and background investigations to ensure that no person shall be eligible for employment in or with any part of the gaming operation if that person's prior activities, criminal record (if any), or reputation, habits and associations 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. The Director shall notify the National Indian Gaming Commission of the results of such background checks before the issuance of such Gaming Licenses.
- E. Hiring, pursuant to the approval of the Tribal Gaming Commission, such professional, clerical, technical and administrative personnel as may be necessary

to carry out the provisions of this Ordinance.

- F. Reviewing all records, documents, and anything else necessary and pertinent to enforcement of any provisions of this Ordinance.
- G. Recommend to the Tribal Gaming Commission whether sanctions should be imposed on any person subject to the jurisdiction of this Ordinance.

Section 3.16 Right of Inspection. The Tribal Gaming Commission, the Director and their agents, inspectors, and employees have the authority:

- A. To inspect any Gaming Facility at any time and shall have immediate access to any and all areas of a Gaming Facility for the purpose of ensuring compliance with the provisions of this Tribal-State Compact and its appendices and the Ordinance;
- B. To inspect all equipment and supplies in, upon or about a Gaming Facility, or inspect any equipment or supplies wherever located, which may, or have been used in the Gaming Facility;
- C. Summarily to seize and remove from a Gaming Facility (or wherever located) and impound such equipment or supplies for the purpose of examination, inspection, evidence or forfeiture;
- D. To demand access to and inspect, examine and audit all papers, books, and records of applicants and licensees respecting any income produced by any Gaming Facility Operator, and require verification of income and all other matters affecting the enforcement of the policy of or any of the provisions of this Ordinance;
- E. To seize and impound any patron's winnings which the Tribal Gaming Commission may have reasons to believe may have been won or obtained in violation of this Ordinance pending a civil forfeiture hearing on such seizure;
- F. For the purpose of administration and enforcement of this Ordinance, the Tribal Gaming Commission, the Director and their investigative personnel may, if deemed necessary by the Tribal Council, have the powers of a peace officer of the San Carlos Apache Tribe for purposes of this Ordinance only;
- G. Tribal Gaming Commissioners and the Director shall each have full power and authority to issue subpoenas and compel the attendance of witnesses for hearing at any place within the Reservation, to administer oaths and to require testimony under oath. Any process or notice may be served in the manner provided for service for process and notices in civil actions. The Tribal Gaming Commission

and the Director may pay such transportation and other expenses of witnesses as it may deem reasonable and proper.

- H. An inspector shall be present in the Gaming Facility during all hours of gaming operation.

Section 3.17 Reporting of Violations. The Gaming Facility Operator, or a Tribal Gaming Commission inspector, as applicable, shall report unusual occurrences and all violations or suspected violations of this Tribal-State Compact and its appendices, or of the Ordinance, to the Tribal Gaming Commission. Regardless of the identity of the reporter to whom the report is made, the Tribal Gaming Commission shall make a written record of any unusual occurrences, violations, or suspected violations, without regard to materiality. The log shall be maintained in an electronic form, provided each entry is assigned a sequential number and the information is recorded in a manner so that, once the information is entered, it cannot be deleted or altered and is available to the State Gaming Agency. Each entry shall be assigned a sequential number and shall include, at a minimum, the following information, which shall be recorded in indelible ink in a bound notebook from which pages cannot be removed and each side of the page is sequentially numbered.

- A. The assigned number;
- B. The date;
- C. The time;
- D. The nature of the incident;
- E. The person(s) involved in the incident; and
- F. The name of the security department or Tribal Gaming Commission employee assigned to investigate.

Section 3.18 Investigations. The Tribal Gaming Commission shall investigate any reported violation of the Tribal-State Compact, shall investigate any reported violation of the Tribal-State Compact's appendices when an investigation is reasonable necessary to ensure the integrity of gaming, the protection of persons and property, and compliance with the Tribal-State Compact, and shall require the Gaming Facility Operator to correct violations upon such terms and conditions as the Tribal Gaming Commission determines are necessary and proper under the provisions of the Tribal Gaming Ordinance.

Section 3.19 Reporting to State Agency. Within forty-eight (48) hours of the time a violation or suspected violation is reported, and within seventy-two (72) hours of the time an unusual occurrence is reported, the Tribal Gaming Commission shall notify the Arizona Department of Gaming. Upon completion of any investigation of an unusual occurrence or a violation or a suspected violation, the Tribal Gaming Commission shall provide copies of its investigative report to the Arizona Department of Gaming, if such disclosure will not compromise on-going law enforcement investigations or activities. In order to efficiently and effectively regulate and monitor Gaming Activities, the Tribal Gaming Commission and the Arizona Department of Gaming will enter into a memorandum of understanding calling for the sharing of investigatory

files, including, at a minimum, files for persons licensed and/or certified pursuant to Section 4 of the Tribal-State Compact and the records required to be kept pursuant to Section 6(e) of the Tribal-State Compact, and agreeing upon the procedure for processing fingerprints, the confidentiality of records, and the process for reporting unusual occurrences and violations of the Tribal-State Compact's appendices.

Section 3.20 Confidentiality of Information. The Tribal Gaming Commission and the Director may refuse to reveal, in any court proceeding, the identity of any informant, or the information obtained from the informant, or both the identity and the information.

Section 3.21 Powers of Delegation. The Tribal Gaming Commission may organize itself into a functional division as it may deem necessary and from time to time alter such plan of organization as it may deem expedient. The Tribal Gaming Commission shall establish its own budget for operations, including a budget for the Director, and acquire such furnishings, equipment, supplies, stationary, books, motor vehicles, and other things as it may deem necessary or desirable in carrying out its functions, and incur such other expenses within the limit of funds available to it, as it may deem necessary. Within the limits of a Tribal Council approved budget, the Tribal Gaming Commission shall employ and fix the salaries of, or contract for, the services of such professional, technical and operational personnel and consultants as the Director and Tribal Gaming Commission may require. At the Tribal Council's discretion, said budget may be reviewed and modified by the Tribal Council every six (6) months. Upon the end of the budget year, any surplus which might exist shall be refunded to the Tribe. The Tribal Gaming Commission and the Director shall each keep and maintain a file of all applications for licenses under this chapter, together with a record of all action taken with respect to such applications. The Tribal Gaming Commission and the Director shall keep and maintain such other files and records as they may deem desirable and all such records may be open to public inspection as they may deem appropriate, provided that the annual Tribal Gaming Commission budget shall be made available to any Tribal member upon demand.

Section 3.22 Sanctions. Any person who engages in activities on the premises of the Gaming Facility subject to the provisions of this Ordinance without a license, in violation of any license or terms imposed thereon, in violation of terms of suspension, or in violation of the Ordinance, including any person who unlawfully trespasses upon any premises licensed by this Ordinance without the consent of the licensee and/or the Tribal Gaming Commission shall be guilty of a crime and be punished in accordance with the provisions of Section 3.24 hereafter.

Section 3.23 Limitations Period. No fine shall be assessed nor any action taken for any violation under the preceding section unless a charge is filed in proper form with the Tribal Court within two (2) years of the Commission of the offense.

Section 3.24 Violations of Ordinance- Punishment. The Tribal Gaming Commission may impose penalties for violations of this Ordinance. Any person who violates any provision of this Ordinance shall be subject to civil penalties including exclusion from employment from the Gaming Operation, exclusion from any Gaming Facility, or, with respect to any person subject to

the jurisdiction of the Tribe to impose such fines, a fine of not more than \$5,000.00 for each such violation. The Tribal Gaming Commission shall have the jurisdiction to impose penalties on any person within the jurisdiction of the Tribe. Winnings found to have been received in violation of this Ordinance are forfeited and become the property of the Tribe.

The Tribal Gaming Commission may recommend to the Tribal Council that the Tribe or its designee bring a civil action or criminal complaint in the courts of the Tribal Court, the State of Arizona or the United States to enforce the provisions of this Ordinance or to enjoin or otherwise prevent any violation of this Ordinance, the Tribal-State Compact or other applicable laws, occurring on the Reservation.

Section 3.25 Due Process Regarding Enforcement Actions. The Tribal Gaming Commission shall promulgate Regulations protecting due process rights of all individuals subject to the enforcement of this Ordinance. Such Regulations shall, at a minimum:

- A. provide standards for emergency or summary suspension of license;
- B. provide fair notice and opportunity for hearing regarding any revocation or suspension of license, and regarding any enforcement action taken pursuant to this Ordinance; and
- C. provide the right to appeal any Gaming Commission disciplinary or enforcement action to the Tribal Court.

Section 3.26 Patron Disputes.

- A. All Gaming Devices must provide an externally visible notice to patrons that any malfunction of the Gaming Device or its associated equipment voids all pays.
- B. In the event that a malfunction occurs in a Gaming Device during the placing of any wager, the Gaming Facility Operator will only be obligated to refund the actual amount of the wager placed. Under no conditions will the Gaming Facility Operator be obligated or liable for any win that results from, either directly or indirectly, a malfunction of a Gaming Device.
- C. **Refusal to Pay Winnings.** Whenever the Gaming Facility Operator refuses payment of alleged winnings to a patron, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron, and the dispute involves:
 - 1. **At least Five Hundred Dollars (\$500.00),** the Gaming Facility Operator shall immediately notify the Tribal Gaming Commission. The Tribal Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or

2. Less than Five Hundred Dollars (\$500.00), the Gaming Facility Operator shall inform the patron of his or her right to request that the Tribal Gaming Commission conduct an investigation if it deems an investigation necessary and determine whether payment should be made.
3. Notice to Patrons. The Tribal Gaming Commission shall send written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of the decision resolving the dispute within thirty (30) days after the date that the Tribal Gaming Commission first receives either a notification from the Gaming Facility Operator or a request to conduct an investigation from the patron.
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 in the return receipt.
5. Review of Decision – Less than \$500.00 Dollars. Within thirty (30) 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 solely upon the prior decision and other documentation provided to it by the patron and the Gaming Facility Operator. The Tribal Gaming Commission shall then issue a written decision and mail it to the parties within sixty (60) days of the filing of the petition.
6. Review of Decision – At Least \$500.00. A patron whose dispute involves at least \$500.00 may file a complaint in Tribal Court within sixty (60) days of receipt of the Tribal Gaming Commission's written decision. The Tribal Court shall have jurisdiction to hear and render decisions on these disputes. Disposition of the action in the Tribal Court system will be final and binding upon all parties in accordance with Tribal law.

Section 3.27 Independence of Tribal Gaming Commission. The Director, Tribal Gaming Commissioners, members of the Tribal Council and their immediate families shall receive no personal compensation, gift, reimbursement, or payment of any kind from any person doing or wishing to do business with the Tribe relating to gaming nor from any person wishing to obtain an unfair advantage in any authorized wager on gaming. Any property received in violation of this provision, including cash payments, shall be immediately forfeited to the Tribe and the offending persons shall be prosecuted to the fullest extent possible under the Tribal law for accepting a bribe. The Gaming Commission shall cooperate to the fullest extent possible with any Federal or State law enforcement agency to pursue prosecution under applicable Federal or State law. Further, the Tribal Gaming Commission shall employ inspectors or agents who shall act under the authority of the Tribal Gaming Commission. Said inspectors shall be independent

of the Gaming Facility Operator and any Management Contractors, and shall be supervised and accountable only to the Tribal Gaming Commission. Said inspectors shall have the right to inspect any Gaming Facility at any time and shall have immediate access to any and all areas of the Gaming Facility. An inspector shall be present in the Gaming Facility during all hours of gaming operation.

Section 3.28 Periodic Meetings. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this Tribal-State Compact and its appendices, representatives of the Tribal Gaming Commission and the Arizona Department of Gaming shall meet, not less than on a quarterly basis during the first year, to review past practices and examine methods to improve the regulatory program created by this Tribal-State Compact and its appendices. The meetings shall take place at a location selected by the Tribal Gaming Commission. The Arizona Department of Gaming, prior to or during such meetings, shall disclose to the Tribal Gaming Commission any concerns, suspected activities, or pending matters reasonably believed to constitute potential violations of this Tribal-State Compact and its appendices by any person, organization or entity, if such disclosure will not compromise on-going law enforcement investigations or activities. Following the first year of this Tribal-State Compact, the Tribal Gaming Commission and the Arizona Department of Gaming shall jointly determine the number of meetings necessary, but in no event shall less than two (2) meetings occur for any twelve (12) month period.

Section 3.29 Financial Services in Gaming Facilities. The Gaming Facility Operator shall not:

- A. Locate an automatic teller machine ("ATM") adjacent to, or in close proximity to any Gaming Device.
- B. Locate in a Gaming Facility an ATM that accepts electronic benefit transfer cards issued pursuant to a state or federal program that is intended to provide for needy families or individuals.
- C. Accept checks or other non-cash items issued pursuant to a state or federal program that is intended to provide for needy families or individuals; and
- D. Extend credit to any patron of a Gaming Facility for Gaming Activities.

Section 3.30 Tribal Regulation of Tribal-State Compact Provisions.

- A. **Tribal Gaming Commission.** The Tribal Gaming Commission has the responsibility for the regulation of all Gaming Activities pursuant to the Ordinance and for the regulation of the Tribal-State Compact and its appendices on behalf of the Tribe. The State Gaming Agency has regulatory responsibility over Gaming Activities, which is specifically set out in the Tribal-State Compact.
 1. The Tribe shall notify the Arizona Department of Gaming of its intent to amend or repeal the Ordinance and shall provide a copy of any change or modification of the Ordinance to the Arizona Department of Gaming.

2. The Tribal Gaming Commission or the Gaming Facility Operator shall operate a surveillance system that meets the requirements of Appendix C of the Tribal-State Compact.
3. The Tribal Gaming Commission shall have the responsibility and authority to investigate alleged violations of the Tribal-State Compact, its appendices, the Ordinance, and other applicable laws, and to take appropriate disciplinary action against the Gaming Facility Operator or the holder of a license for a violation, or to institute appropriate legal action for enforcement, or both; and to confiscate or shut down any Gaming Device or other equipment or gaming supplies failing to conform to any required standards.

B. Gaming Facility Operator. The Gaming Facility Operator shall have the responsibility for the on-site operation, management, and security of the Gaming Facility. The Gaming Facility Operator shall establish, maintain, and adhere to a written security plan that meets the requirements of Appendix C of the Tribal-State Compact. The Gaming Facility Operator shall adopt reasonable procedures designed to provide for the following:

1. The physical safety of its employees;
2. The physical safety of patrons in the Gaming Facility;
3. The physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department; and
4. The protection of the patrons' property and the Gaming Facility's property from illegal activity.
5. The detention of persons who may be involved in illegal acts for the purpose of notifying and summoning appropriate law enforcement authorities.

CHAPTER IV

LICENSING

Section 4.01 Gaming Facility License Required. A Tribal license shall be required for each place, facility, or location on tribal lands where gaming occurs pursuant to 25 C.F.R. § 522.2.

Section 4.02 Gaming Regulatory License. Every employee of the Tribal Gaming Office, including the Director, shall be licensed by the Tribe. The Tribe shall develop policies and procedures to license employees of the Tribal Gaming Commission. Such policies and procedures shall include, but not limited to, the following:

- A. **Temporary Licenses.** Any enrolled member of the Tribe who applies for a position with the Tribal Gaming Commission shall be given a temporary Gaming Regulatory License by the Tribe pending a background investigation of such applicant. Any individual who is not an enrolled member of the Tribe and who applies for a Gaming Regulatory License from the Tribe for a position with the Tribal Gaming Commission may be given a temporary Gaming Regulatory License after a preliminary background check has been completed.
- B. **Duration and Renewal.** A Gaming Regulatory License shall be effective for one (1) year from the date of issuance. However, such licenses for Tribal Gaming Commissioners shall be effective for the term of their respective appointment by the Tribal Council.
- C. **Miscellaneous.** The issuance of a temporary Gaming Regulatory License by the Tribe in no way constitutes a guarantee of employment.
- D. **Due Process Provisions.** Due process regulations and procedures regarding approving, disapproving, revoking, suspending, limiting or conditioning a Gaming Regulatory License will be implemented pursuant to this section.

Section 4.03 Issuance of Tribal Gaming Licenses; Objections. The Tribal Gaming Commission shall consult with appropriate law enforcement officials concerning any Gaming License it may issue. If, after issuance of a Gaming License, reliable information is received that a Primary Management Official or Key employee does not meet the eligibility requirements established under Section 4.15 of this Ordinance, the Tribal Gaming Commission shall suspend such Gaming License and, after notice and hearing, may revoke such Gaming License.

Section 4.04 Non-Transferability of License. Any Gaming License issued pursuant to the provisions of this Ordinance is valid only for the person or entity at the place of business shown on the face thereof. It is not assignable or otherwise transferable to any other person or entity for any other location without approval of the Director or Tribal Gaming Commission.

Section 4.05 Granting of License-Majority Vote. To approve of any Gaming License issued pursuant to this Ordinance, a quorum of the Tribal Gaming Commission must be present with a majority vote of approval by said quorum required. A Gaming License will not be issued to a person whose Gaming License has been previously revoked pursuant to this Ordinance, or to whom the issuance of renewal of a Gaming License has been denied, except with the unanimous approval of the Tribal Gaming Commission.

Section 4.06 Failure of Applicant to Disclose Material Information. An applicant for licensing shall make true and full disclosure of all information to the Director and Tribal Gaming Commission as necessary or appropriate in the public's interest or as required in order to carry out the policies of the Tribe relating to licensing and control of the gaming industry. It is the duty of the applicant to disclose all information material to whether the applicant's involvement with gaming would jeopardize or compromise the Tribal interest, whether or not the applicant has been specifically requested to provide that information. It shall constitute a violation of this Ordinance to fail to disclose, to mislead, or to misstate any such material information to the Director, Tribal Gaming Commission, or to any licensee's employer.

Section 4.07 Temporary Gaming Licenses. The Tribal Gaming Commission may issue a temporary Gaming License to any person or entity applying for a license to work in a licensed Gaming Facility which shall be valid pending the background investigation of the applicant. In no event shall such temporary license be valid for longer than 180 days. In addition, an applicant who applies for a Gaming License for any of the following positions of the Gaming Facility Operator may be granted a temporary Gaming License upon receipt by the Tribal Gaming Commission of such completed application:

- A. Food and beverage service personnel such as chefs, cooks, waiters, waitresses, bus persons, dishwashers, food and beverage cashiers, and hosts;
- B. Gift shop managers, assistant managers, cashiers, and clerks;
- C. Greeters;
- D. Landscapers, gardeners and groundskeepers;
- E. Maintenance, cleaning and janitorial personnel;
- F. Stewards and valets;
- G. Wardrobe personnel; and
- H. Warehouse personnel.

Such temporary Gaming License(s) will be valid pending the background investigation of the applicant. In addition, any enrolled member of the Tribe applying for any position with a Gaming Facility Operator may be given a temporary Gaming License pending a background investigation. The issuance of a temporary Gaming License in no way constitutes a guarantee of employment.

Section 4.08 Parameters of Licenses. Violation of any provision of this Ordinance or any of the Tribal Gaming Commission's Regulations by a licensee, its agent, or employee shall be deemed contrary to the public health, safety, morals, good order, and general welfare of the San Carlos Apache Tribe and the inhabitants of the Reservation, and shall be deemed grounds for refusing to grant or renew a license, suspension or revocation of a license, or shall constitute grounds for the filing of charges by the Tribal Gaming Commission or Director. If the Tribe elects to contractually agree to resolve disputes in a manner other than revocation of a license, such contractual agreement shall supersede any conflicting provisions of this section, so long as the agreement provides a reasonable avenue for the Tribe to ensure a licensee's compliance with all other aspects of this Ordinance. Acceptance of a Gaming License or renewal on the part of a licensee shall constitute the licensee's agreement to be bound by all of the provisions of this Ordinance, as well as the Regulations and conditions set forth by the Director or the Tribal Gaming Commission, and to cooperate fully with the Director and the Tribal Gaming Commission. It is the responsibility of the licensee to keep informed of the contents of such Regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations.

Section 4.09 Licensing of Distributors. By and through its Regulations, the Tribal Gaming Commission may authorize, require, and issue annual licenses to any person or entity to engage in the selling, distributing, or otherwise supplying of gambling equipment or paraphernalia for use in connection with licensed Gaming Activities.

Section 4.10 License and Regulation of Class II Gaming Activities. The Tribal Gaming Commission shall follow the requirements for licensing and regulation of Class II gaming pursuant to the Indian Gaming Regulatory Act.

Section 4.11 Licenses and Regulation of Class III Gaming Activities; Tribal-State Compact Required. The Tribal Gaming Commission and the Gaming Facility Operator shall follow the requirements for licensing and regulation of Class III gaming pursuant to the terms and conditions of its Tribal-State Compact with the State of Arizona entered into on December 4, 2002 as well as the Indian Gaming Regulatory Act and/or applicable federal law.

Section 4.12 Licenses for Key Employees and Primary Management Officials. The Tribal Gaming Commission shall ensure that the policies and procedures set out in this section are implemented with respect to Key employees and Primary Management Officials employed at any Gaming Facility operated on the Reservation:

A. **Application Forms**

1. The following notice shall be placed on the application form for a Key Employee or a Primary Management Official before that form is filled out by an applicant:

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 a gaming operation. 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 when 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 investigation 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.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application.

2. Existing Key employees and Primary Management Officials shall be notified in writing that they shall either:
 - a. Complete a new application form that contains a Privacy Act notice; or
 - b. Sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that notice.
3. The following notice shall be placed on the application form for a Key employee or a Primary Management Official before that form is filled out by an applicant.

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).

4. The Tribal Gaming Commission shall, in writing, notify existing Key employees and Primary Management Officials that they shall either:
 - a. Complete a new application form that contains a notice regarding false statements; or
 - b. Sign a statement that contains the notice regarding false statements.

B. **Background Investigation:** No license shall be granted to any person or entity whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or in the carrying on of business and financial arrangements incidental thereto. Further, the Tribal Gaming Commission shall request from each Primary Management Official and from each Key employee all of the following information:

1. Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
2. Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;
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 under paragraph (a)(2) of this section;
4. Current business and telephone numbers;
5. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
6. A description of any existing and previous relationships with the gaming industry generally, including ownership interests in those businesses;
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;
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;
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;

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 paragraph (a)(8) or (a) (9) of this section, the criminal charge, the name and address of the court involved and the date and disposition;
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;
12. A current photograph;
13. Any other information the Tribal Gaming Commission deems relevant; and
14. Fingerprints consistent with procedures adopted by the Tribal Gaming Commission according to 25 C.F.R. § 522.2 (h).

Section 4.13 Background Investigation of Key Employees and Primary Management Officials Pursuant to Section 522.2(b) of the Rules and Regulations of the National Indian Gaming Commission.

The Tribal Gaming Commission shall conduct an investigation sufficient to make a determination under Section 4.15 below. In conducting a background investigation, the Tribal Gaming Commission or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

- A. Pursuant to Section 5 of the Tribal-State Compact between the Tribe and the State of Arizona entered into on December 4, 2002, the procedures for Tribal licensing and state certification of all Gaming Facility employees for the conduct of Class III gaming are adopted and incorporated by reference in this paragraph.
- B. The procedures for conducting background investigations on Key employees and Primary Management Officials for Class II gaming in order to determine their eligibility for employment are:
 1. Criminal history check;
 2. Civil history check;
 3. Financial and credit check;
 4. Reference check;
 5. Relative check;
 6. Business and personal associates check;
 7. Educational verification;

In addition to the above, such background investigation shall document the disposition of all potential problem areas and any information disqualifying such applicant from employment.

- C. The Tribal Gaming Commission is primarily responsible for conducting background investigations and making suitability determinations in consultation with the National Indian Gaming Commission;
- D. The Director in association with the State of Arizona shall be responsible for conducting, reviewing and either approving or disapproving the investigative work;
- E. The Director is responsible for reporting the results of the background investigations to the National Indian Gaming Commission;
- F. The Tribal Gaming Commission will obtain the fingerprints for processing;
- G. Suitability determination and selection of Tribal Gaming Commission members is more specifically set forth in the Regulations of the Tribal Gaming Commission;
- H. The investigative report shall set forth, in detail, the:
 - 1. Steps taken in conducting the background investigation;
 - 2. Results obtained;
 - 3. Conclusions reached;
 - 4. The basis for those conclusions.

Section 4.14 Application Fee. The Tribal Gaming Commission shall set a fee for applications, background investigations, and licenses. All such fees shall be made payable to the San Carlos Apache Tribal Gaming Commission.

Section 4.15 Eligibility Determination. The Tribal Gaming Commission shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a Key employee or Primary Management Official for employment in a Gaming Facility. If the Tribal Gaming Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a Gaming Facility Operator shall not employ that person in a Key employee or Primary Management Official position.

Section 4.16 Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission.

- A. When a Key employee or Primary Management Official begins work at a Gaming Facility authorized by this Ordinance, the Tribal Gaming Commission shall

forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in section 4.15.

- B. The Tribal Gaming Commission shall forward the report referred to in Section 4.17 to the National Indian Gaming Commission within 60 days after an employee begins work.
- C. The Gaming Facility Operator shall not employ as a Key employee or Primary Management Official a person who does not have a license after 90 days.

Section 4.17 Report to the National Indian Gaming Commission.

- A. Pursuant to the procedures set out in section 4.16, the Tribal Gaming Commission shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:
 - 1. Steps taken in conducting the background investigation;
 - 2. Results obtained;
 - 3. Conclusions reached; and
 - 4. The basis for those conclusions.
- B. The Tribal Gaming Commission shall submit, with the report, a copy of the eligibility determination made under section 4.15.
- C. If a license is not issued to an applicant, the Tribal Gaming Commission:
 - 1. Shall notify the National Indian Gaming Commission; and;
 - 2. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.
- D. With respect to Key employees and Primary Management Officials, the Tribal Gaming Commission shall retain applications for employment and reports (if any) of background investigation for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

Section 4.18 Granting a Gaming License.

- A. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Tribal Gaming Commission that it has no objection to the issuance of a license pursuant to a license application filed by a Key Employee or a Primary Management Official for whom the Tribal Gaming Commission has provided an application and investigative report to the National Indian Gaming Commission, the Tribal Gaming Commission may issue a Gaming License to such applicant.
- B. The Tribal Gaming Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a Key employee or a Primary Management Official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph A of this section until the Chairman of the National Indian Gaming Commission receives additional information.
- C. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribal Gaming Commission with a statement itemizing objections to the issuance of a Gaming License to a Key employee or to a Primary Management Official for whom the Tribal Gaming Commission has provided an application and investigative report to the National Indian Gaming Commission, the Tribal Gaming Commission shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribal Gaming Commission shall make the final decision whether to issue a Gaming License to such applicant.

Section 4.19 Gaming License Suspension.

- A. If, after the issuance of a Gaming License, the Tribal Gaming Commission receives from the National Indian Gaming Commission reliable information indicating that a Key employee or a Primary Management Official is not eligible for employment under Section 4.15 above, the Tribal Gaming Commission shall suspend such Gaming License and shall notify in writing the licensee of the suspension and the proposed revocation.
- B. The Tribal Gaming Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a Gaming License.
- C. After a revocation hearing, the Tribal Gaming Commission shall decide to revoke or to reinstate a Gaming License. The Tribal Gaming Commission shall notify the National Indian Gaming Commission of its decision.

- D. All other matters related to Gaming License approval, disapproval, revocation, suspension, limitation or condition shall be subject to the procedures set forth in Sections 3.11 and 3.25 of this Ordinance.

Section 4.20 Duration and Renewal of Gaming License. A Gaming License shall be effective for one (1) year from the date of issuance. If, after one year, an employee wishes to continue his or her employment at the Apache Gold Casino, he or she shall complete an application for renewal of his or her gaming license, which is subject to the terms and conditions set forth in this Ordinance.

CHAPTER V

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CHAPTER VI

AUDITING AND INTERNAL CONTROL

Section 6.01 Minimum Procedures for Control of Internal Fiscal Affairs. The Tribal Gaming Commission shall promulgate Regulations for control of internal fiscal audits of all Gaming Activities. At a minimum, those Regulations shall:

- A. Prescribe minimum procedures for safeguarding the Gaming Facility's assets and revenues, including recording of cash, evidences of indebtedness, and mandatory count procedures. Such procedures shall establish a control environment, accounting system, and control procedures that safeguard the assets of the organization, assures that operating transactions are properly recorded, promotes operational efficiency, and encourages adherence to prescribed policies;
- B. Prescribe minimum reporting requirements to the Tribal Gaming Commission;
- C. Provide for the adoption and use of internal audits, by internal auditors and Certified Public Accountants licensed to practice accounting in the State of Arizona.
- D. Formulate a uniform code of accounts and accounting classifications to assure consistency, comparability and effective disclosure of financial information. Such code shall require the retention of records reflecting statistical drop (amount of cash wagered by patrons), statistical win (amount of cash won by the gaming operating) and the percentage of statistical win to statistical drop, or providing similar information, for each type of game or each Gaming Device.
- E. Prescribe the intervals at which such information shall be furnished;
- F. Provide for the maintenance of documentation (i.e., checklists, programs, reports, etc) to evidence all internal work performed as it relates to the requirements of this section; and
- G. Provide that all financial statements and documentation referred to in section (F) be maintained for a minimum of five (5) years.

Section 6.02 Tribal Gaming Commission Oversight of Internal Fiscal Affairs. The Gaming Commission shall, by regulation, require audits of the financial statements of all Gaming Facility Operators. Such audits must:

- A. be made by independent Certified Public Accountants holding a permit issued by the State of Arizona to practice public accounting;
- B. include an opinion that the financial statement fairly and accurately presents the financial condition of the gaming operation in accordance with generally accepted accounting principles (GAAP) and in accordance with the standards of the accounting profession established by rules and regulations of the Arizona State Board of Accountancy and the American Institute of Certified Public Accountants;
- C. disclose whether the accounts, records, and control procedures maintained by the gaming operation are in compliance with the Regulations promulgated by the Gaming Commission; and
- D. provide for a preliminary review of the internal control structure, upon adoption of the policies and procedures by the entity, to disclose any deviation from prescribed rules and Regulations and report such findings to the Tribal Gaming Commission and management.

Section 6.03 Tribal Gaming Commission's Right to Conduct Audit. The Tribal Gaming Commission shall be able to retain its own appointed accountants, or direct an accountant employed by the Tribe to conduct its own audit of any Gaming Facility Operator .

Section 6.04 Prohibition Against Embezzlement. Any delay, maneuver, or action of any kind which in the opinion of the Director is effectuated by any licensee to unlawfully divert gaming or other proceeds properly belonging to the Tribe shall constitute grounds for taking disciplinary action against that licensee. Sanctions may include fining, revoking, suspending, limiting or refusing to renew the Gaming License.

Section 6.05 Audit

- A. The Tribal Gaming Commission shall cause an independent audit of the Gaming Facility Operator to be conducted annually and shall submit the resulting audit reports to the National Gaming Commission.
- B. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection A above.

CHAPTER VII

AUTHORIZATION OF GAMING

Section 7.01 Prohibition Against Gaming. No person duly authorized by the Tribal Gaming Commission shall engage, conduct or condone any Class I, II or III gaming unless such Class I, II or Class III gaming is approved by the Tribal Gaming Commission and Regulations for rules governing such game have been duly promulgated by the Tribal Gaming Commission.

Section 7.02 Grace Period. The prohibition contained in Section 7.01 shall not apply to those games already being played as of the date of enactment of this Ordinance, provided however, that the licensee conform to the rules promulgated hereunder within five (5) days of such promulgation.

Section 7.03 Authorization of Gaming. The Tribal Gaming Commission may authorize the playing of any Class I, Class II or Class III gaming not prohibited by the laws of the State of Arizona. The Tribal Gaming Commission shall promulgate Regulations for rules governing all authorized Class I, Class II or Class III gaming, including Regulations governing the equipment (chips, dice, cards, tiles, etc.) used in such Class I, Class II or Class III gaming. Any provision in the Tribal-State Compact providing for notice to and comment from the state of Arizona, shall be complied with before any Class III gaming is authorized by the Tribal Gaming Commission.

Section 7.04 Approval of Gaming Equipment. The Tribal Gaming Commission shall have the discretion to review and approve all gaming equipment and other devices used in the Gaming Facility as to quality, design, integrity, fairness, honesty and suitability.

- A. The Tribal Gaming Commission may require a prototype or sample of any model of gaming equipment or other device used in the Gaming Facility to be placed in the custody of the Director and retained by him as a control for comparison purposes.
- B. Any evidence that gaming equipment or other devices used in the Gaming Facility have been tampered with or altered in any way that would affect the integrity, fairness, honesty or suitability of the equipment or device shall be immediately reported to the Tribal Gaming Commission.

Section 7.05 Posting of Rules. The rules of each authorized game offered at any duly licensed Gaming Facility shall be posted in a conspicuous location and shall be clearly legible.

Section 7.06 Prohibition Against Wagers by Persons Under the Age of 21. No person under 21 years of age shall be permitted to place any wager, directly or indirectly, in any Gaming Activity.

CHAPTER VIII

EXCLUSION OR EJECTION OF INDIVIDUALS

Section 8.01 List of Excluded Persons. The Tribal Gaming Commission may, by regulation, provide for the establishment of a list of person who are to be excluded or ejected from any Gaming Facility. The list may include any persons whose presence in the Gaming Facility is determined by the Tribal Gaming Commission to pose a threat to the interests of the Tribe, the State of Arizona, or to licensed gaming. Race, color, creed, national origin or ancestry or sex must not be grounds for placing the name of a person on the list.

Section 8.02 Notice and Opportunity to be Heard. The Tribal Gaming Commission shall promulgate regulations providing fair notice and an opportunity to be heard to any individual whose name is being contemplated by the Tribal Gaming Commission to be placed on the list referred to in section 8.01. Such regulations must provide the person an opportunity to show cause why his name should be deleted from the list. The individual may appeal any decision of the Tribal Gaming Commission placing his name on the list to the Tribal Court.

Section 8.03 Prohibition Against Listed Individuals. It shall be a violation of this Ordinance for any licensee to knowingly fail to exclude or eject from the Gaming Facility any persons placed on the list referred to in section 8.01. It shall be a violation of this Ordinance for any person whose name appears on the list referred to in section 8.01 to enter into or engage in any game at a Gaming Facility.

Section 8.04 Prohibition Against Certain Individuals. It shall be a violation of this Ordinance for any licensee who knowingly fails to exclude or eject from the Gaming Facility any individual who:

- A. is visibly under the influence of liquor or any narcotic or such other substance; or
- B. is under the age of eighteen years.

Section 8.05 Management and Security for Prohibited Persons. The Gaming Facility Operator may temporarily or permanently ban individuals from the surrounding premises controlled by the Gaming Facility Operator for such reasons as the Gaming Facility Operator may deem appropriate. The Tribal Gaming Commission may temporarily or permanently ban individuals from the Tribe's Gaming Facilities for such reasons as the Tribal Gaming Commission may deem appropriate. The Gaming Facility Operator and/or the Tribal Gaming Commission may detain individuals briefly for purposes of obtaining identification from the individuals in connection with the issuance of a Notice of Exclusion and may detain individuals who may be involved in illegal activities for purposes of notifying and summoning appropriate law enforcement authorities. If the Gaming Facility Operator and the Tribal Gaming

Commission request that an individual leave the Gaming Facility or the surrounding premises and such individual refuses to do so, the Gaming Facility Operator and/or the Tribal Gaming Commission may eject such individual using such force as may be necessary under the circumstances or request that the San Carlos Police Department remove the individual.

CHAPTER IX

CHEATING

Section 9.01 Unlawful Acts. It is unlawful for any person:

- A. to alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
- B. to place, increase or decrease a bet, or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or knowledge of any event that affects the outcome of the game or knowledge that is the subject of the bet or wager;
- C. to aid anyone in acquiring such knowledge as set forth in subparagraph (B), for the purpose of increasing or decreasing a bet or wager, or for the purpose of determining the course of play contingent upon that event or outcome;
- D. to claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gambling game with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;
- E. knowingly to entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter, with the intent that the other person play or participate in that gambling game;
- F. to place or increase a bet or wager after acquiring knowledge of the outcome of the game or event which is the subject of the bet or wager, including past-posting and pressing bets;
- G. to reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets; and
- H. to manipulate with intent to cheat, any component of a Gaming Device in a manner contrary to the designed and normal operation purpose for the component, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

Section 9.02 Prohibition Against Electronic Aids. Except as specifically permitted by the Director with approval of the Tribal Gaming Commission, no person shall possess with the intent to use, or actually use, at any table game, either by himself or in concert with others any calculator, computer or other electronic, electrical, or electromechanical device to assist in projecting an outcome at any table game, to keep track of or analyze the cards having been dealt, or to change the probabilities of any table game or the playing strategies to be utilized.

CHAPTER X

NATIONAL INDIAN GAMING COMMISSION

AND TRIBAL- STATE COMPACT

Section 10.01 National Indian Gaming Commission- Regulations. Notwithstanding any provision in this Ordinance or any Regulation promulgated thereunder, the Tribal Gaming Commission is fully empowered to comply with all regulations promulgated by the National Indian Gaming Commission, including but not limited to, all requirements to report ordinances, contracts, license applications, background checks, and other information to the National Indian Gaming Commission.

Section 10.02 National Indian Gaming Commission- Assessment. Notwithstanding any provision in the Ordinance or any Regulation promulgated thereunder, the Tribal Gaming Commission is fully empowered to comply with all assessments authorized by the National Indian Gaming Commission. Such assessments shall be paid from the Treasury of the San Carlos Apache Tribe.

Section 10.03 Tribal-State Compact with the State of Arizona. Notwithstanding any provision in this Ordinance or any Regulation promulgated thereunder, the Tribal Gaming Commission is fully empowered to comply with the provisions of the Tribal-State Compact between the Tribe and the State of Arizona executed on December 4th, 2002 and as may be amended from time to time.

CHAPTER XI

MISCELLANEOUS

Section 11.01 Security. Each licensed Gaming Facility must provide for reasonable security. All security personnel must be licensed by the Tribal Gaming Commission.

Section 11.02 Maintenance of Ordinance and Regulations. Each licensee shall obtain, maintain and keep current a copy of the Ordinance and Regulations promulgated thereunder, which shall be located at the premises used for the conduct of a licensed activity. The Ordinance and Regulations shall be produced by the licensee and shown to any person upon demand. That licensee may not have a current copy of the Ordinance or Regulations shall not in way diminish the licensee's obligation to abide by the Ordinance and Regulations.

Section 11.03 Compliance with Other Laws. The construction, maintenance and operation of any facility in which Gaming Activities are to take place shall be in a manner which adequately protects the environment and the public's health and safety and shall comply with any otherwise applicable Tribal and federal laws relating to environmental protection and public health and safety.

Section 11.04 Severability. If any provision of this Ordinance, or its application to any purpose or circumstance, is held invalid by a court of competent jurisdiction, the full remainder of the provision, or the application of the provision through another person or circumstances, shall not be affected.

Section 11.05 Designated Agent. The designated agent for service of process as required by the Indian Gaming Regulatory Act is the Director of the Tribal Gaming Commission.

Section 11.06 Law Enforcement. The designated law enforcement agency as required by the Indian Gaming Regulatory Act is the San Carlos Apache Tribal Police Department. The procedures set forth in Chapter IV above describe the steps taken for a complete investigation. Criminal history checks shall be processed both on a State and Federal level.

Section 11.07 Sovereign Immunity. Nothing in this Ordinance shall be construed to limit or waive the sovereign immunity of the San Carlos Apache Tribe or any entity of the San Carlos Apache Tribe.

Section 11.8 Repeal. To the extent that they are inconsistent with this Ordinance, all prior gaming ordinances or codes are hereby repealed.

CHAPTER XII

TORT REMEDIES

Section 12.01 Immunity from Suit.

The San Carlos Apache Tribal Gaming Enterprise is an entity of the San Carlos Apache Tribe and is established for the benefit of the Tribe. As such, it has the same immunity from suit as the Tribe possesses. Notwithstanding the fact that the Enterprise is immune from suit, the Enterprise is hereby expressly granted the right to sue to in its own name, and a limited right to be sued in its own name as more fully set out below. The Enterprise is not immune from suits, actions or proceedings initiated by the Tribe or its regulatory agencies and departments. Nothing in this section shall be construed as a waiver of or limitation on the sovereign immunity of the Tribe.

Section 12.02 Definitions

Unless otherwise required by the context, the following words and phrases in this Section Shall be defined as follows:

- A. "Gaming Enterprise Site" means that area of the San Carlos Apache Gold Casino Resort which has been opened to the general public for purposes of gaming or Which is used by employees of the Enterprise during the course of their Employment provided that such area is covered by the liability insurance of the Enterprise.
- C. "Claim" means a formal letter giving notice of a petition for a financial award and/or a potential cause of action pursuant to this Chapter.
- D. "Cause of Action" or "Action" means a formal complaint filed in the Civil Division of the San Carlos Apache Tribal Court.

Section 12.03 Limited Waiver of Immunity.

The Enterprise may be sued only in the Courts of the San Carlos Apache Tribe, and only in the following limited circumstances:

- A. With respect to claims against the Enterprise for any personal injury or property damage, the amount and nature of which are within the express coverage of a policy of insurance procured and maintained pursuant to the Charter, as acknowledged by the insurer under such policy, the Enterprise's immunity is

waived to the extent of Two Million Dollars (\$2,000,000.00) provided that any judgment, order or award may only be satisfied pursuant to:

- 1) the express provisions of the policy(ies) of insurance which are in effect at the time of each such Judgment, order or award; and
 - 2) an action, if necessary, brought by the prevailing party against the insurer under such policy.
- B. This Chapter applies only to those activities undertaken by the Enterprise or its employees, and which occur on the Gaming Enterprise Site as defined above. This Chapter is intended to permit only those claims for personal injury or property damage which are covered by the liability insurance of the Enterprise. This Chapter is to be strictly and narrowly construed.
- C. The sovereign immunity of the San Carlos Apache Tribe shall continue except to the extent that it is expressly waived by this Chapter. Members of the Tribal Council remain immune from suit for actions taken during the course and within the scope of their duties as members of the Tribal Council.

Section 12.04 Limitation on Awards

- A. The Enterprise is not liable for punitive or exemplary damages, and no award or other judgment imposing punitive or exemplary damages shall be applied in any claim for injuries under this Chapter.
- B. No rule of law imposing absolute or strict liability shall be applied in any claim for injuries under this Chapter.
- C. No award for pain and suffering or mental anguish shall be applied except where such award does not exceed fifty percent of the actual damages sustained and provided that any such award is expressly covered by the liability insurance of the Enterprise.
- D. No default judgment may be entered against the Enterprise under this Chapter.

Section 12.05 Section Strictly Construed.

Except for otherwise expressly provided in Section 12.03, nothing contained in Section 12.03 shall be interpreted or construed as:

- A. a waiver of the sovereign immunity of the Enterprise beyond the limits set forth in Section 12.03; or

- B. a waiver of the sovereign immunity of the Enterprise from the imposition of any judgment, order or award of interest prior or subsequent to judgment, attorney's fees, court costs, civil penalties or punitive, double, treble, incidental, or consequential damages; or
- C. a waiver of the sovereign immunity of the Enterprise from a levy on any judgment or a lien, attachment, execution or other judicial or non-judicial process upon the assets of the Enterprise or the Tribe; or
- D. creating any liability for the Tribe with respect to any claims or other obligations asserted against the Enterprise or arising out of its operations.

In addition, The Tribal Council retains the power to prospectively modify this limited waiver of the Enterprise's immunity either generally or with respect to particular circumstances.

Section 12.06 Authorization of Claim Against Enterprise.

Persons who have claims against the Enterprise shall file the claims with the General Manager of the Apache Gold Casino Resort, Chairperson of the Enterprise Board and with the Chairperson of the San Carlos Apache Tribe within 180 days after the cause of action accrues. The claim shall contain facts sufficient to permit the Enterprise to understand the basis upon which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim which is not filed within 180 days after the cause of action accrues is forever barred and no action may be maintained thereon.

- A. For purposes of this section, a cause of action accrues when a damaged party realizes that he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition which caused or contributed to the damage.
- B. A claim against the Enterprise filed pursuant to this Section is deemed denied 60 days after the filing of the claim unless the claimant is advised of the denial in writing before the expiration of 60 days.
- C. At the request of the claimant or his or her designee, the Tribal Gaming Facility Operator shall provide claimant with:
 - 1. a copy of this Chapter,
 - 2. the name, address, and telephone number of the Tribal Gaming Facility Operator, and
 - 3. the mailing address and telephone number of the Clerk of the Tribal Court.

Section 12.07 General Limitations.

All actions against the Enterprise shall be brought within one year after the cause of action accrues and not afterwards. All causes of action must be accompanied by an affidavit demonstrating proof of compliance with Section 12.06 of this Section.

END OF THE TRIBAL GAMING ORDINANCE OF THE SAN CARLOS APACHE TRIBE

DULY ADOPTED THIS 14th DAY OF SEPTEMBER, 2004.



ACTING TRIBAL CHAIRMAN