

NATIONAL
INDIAN
GAMING
COMMISSION

FEB 16 1994

Harrison Talgo, Sr., Chairman
San Carlos Apache Tribe
P.O. Box 0
San Carlos, Arizona 85550

Dear Chairman Talgo:

This letter responds to your request to review and approve the tribal gaming ordinance adopted by the San Carlos Apache Tribe (the Tribe) on January 18, 1994. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games.

It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

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

Thank you for submitting the ordinance of the San Carlos Apache Tribe for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

Anthony J. Hope

Anthony J. Hope
Chairman

cc: Steve M. Titla, Esq.

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

R E S O L U T I O N

No. JA-94-04

WHEREAS, the San Carlos Apache Tribe is a Federally recognized Indian Tribe organized pursuant to the provisions of the Indian Reorganization Act of June 18, 1934. (48 Stat. 984); and

WHEREAS, the San Carlos Apache Tribe made a decision to initiate gaming on the Reservation for the economic benefit of the San Carlos Apache Tribe; and

WHEREAS, the San Carlos Apache Tribe passed a gaming ordinance pursuant to the Indian Gaming Regulatory Act (IGRA) and submitted it to the National Indian Gaming Commission (NIGC); and

WHEREAS, the National Indian Gaming Commission has reviewed the ordinance and finds that one addition needs to be made to the ordinance; and

WHEREAS, the National Indian Gaming Commission advises that the following clause be added to the ordinance:

"Section 2.04. License Required. A tribal licenses shall be required for each place, facility, or location on tribal lands where gaming occurs pursuant to 25 C.F.R. Stat. 522.4(b) (6)."

WHEREAS, the San Carlos Apache Tribal Council desires Tribal Gaming Commission members who have legal and law enforcement backgrounds so they can follow through with regulations and investigative duties prescribed under the Gaming Ordinance.

NOW, THEREFORE, BE IT RESOLVED: by the Tribal Council of the San Carlos Apache Tribe that the San Carlos Apache Tribe hereby amends the San Carlos Gaming Ordinance to include the following language:

"Section 2.04. 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. Stat. 522.4 (b) (6)."

BE IT FURTHER RESOLVED: that the sentence in Section 3.03 Establishment of Gaming Office, on page 21 of the Gaming Ordinance which reads "Only enrolled members of the Tribe may be appointed to the Gaming Office." is hereby deleted so the Tribe can appoint Gaming Commissioners with legal or law enforcement backgrounds from the population at large.

BE IT FURTHER RESOLVED: that the Chairman, Vice Chairman, or his designee, are authorized to execute all documents pertaining to this amendment.

C E R T I F I C A T I O N

I, the undersigned Secretary of the San Carlos Apache Tribal Council, hereby certify that the San Carlos Apache Tribal Council is presently composed of eleven (11) members, of whom eleven (11) constituting a quorum, were present at a Special Council Meeting hereto held on the 18th day of January, 1994, and that the foregoing Resolution No. JA-94-04 was duly adopted by a vote of For: 8; Opposed: 0; Abstained: 2; of the Tribal Council pursuant to the provisions of Article V, Section 1 (a), Amended Constitution and Bylaws of the SAN CARLOS APACHE TRIBE, effective February 24, 1954.



Ophelia James, Tribal Secretary
SAN CARLOS APACHE TRIBAL COUNCIL

Tribal Gaming Ordinance
of the
San Carlos Apache Tribe
Adopted on
January 18, 1994

APPROVED

**TRIBAL GAMING ORDINANCE
SAN CARLOS APACHE TRIBE**

TABLE OF CONTENTS

	<u>Page No.</u>
Chapter I - Definitions	1-7
Chapter II - Ordinance	
Purpose	8
Gaming Authorized	8
Ownership of Gaming	8
License Required	9
Use of Gaming Revenues	9
Audit	9
Protection of the Environment and Public Health and Safety	10
Licenses for Class II Key Employees and Primary Management Officials	10
Definitions	10
Application Forms	11
Background Investigation	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	15
Application Fee	16
Eligibility Determination	16
Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission	17
Report to the National Indian Gaming Commission	17
Granting a Gaming License	18
License Suspension	19
Class III Gaming	19
Repeal	19
Chapter III - Administration and Enforcement	
Unauthorized Gaming	20
Ownership - Revenues to Benefit Tribe	20
Establishment of Gaming Office	21
Restrictions on Gaming Officers	21
Compensation for Gaming Officers	21
Selection of Chairperson	22
Meetings Open to Public	22
Quorum - Majority Vote	22
Monthly Report	22

TABLE OF CONTENTS

Page No.

Powers	23
Prior Notice of Actions	23
Request for Gaming Office Action	24
Voting on Licensing	24
Gaming Office Findings	24
Notification of Gaming Office Decision	25
Right to Appeal	25
Appointment of Director	25
Director's Contract	26
Termination of Director	26
Duties of Director	26
Right of Inspection	28
Confidentiality of Information	30
Powers of Delegation	30
Sanctions	31
Limitations Period	31
Violations of Code - Punishment	31
Due Process Regarding Enforcement Actions	32
Patron Disputes	32
Independence of Gaming Office	33

Chapter IV - Licensing of Games

Issuance of Tribal Gaming Licenses;	
Objections	35
Non-Transferability of License	35
Granting of License - Majority Vote	35
Licenses and Regulation of Class III Gaming	
Activities; Tribal-State Compact Required	35
Failure of Applicant to Disclose Material	
Information	36
Temporary Employment Licenses	36
Parameters of Licenses	36
Licensing of Distributors	37

Chapter V - Management Contracts

Gaming Office Approval Required	38
Approval of Management Contracts	39
Percentage of Net Revenue Fees	40
Contract Disapproval	41
Modifying or Voiding Contract	42
Conveying Interest in Land	42
Fee for Investigation Cost	42
Dispute Resolution	43

TABLE OF CONTENTS

Page No.

Chapter VI - Auditing and Internal Control

Minimum Procedures for Control of Internal Fiscal Affairs	45
Gaming Office Oversight of Internal Fiscal Affairs	46
Gaming Office's Right to Conduct Audit	47
Prohibition Against Embezzlement	47

Chapter VII - Authorization of Gaming

Prohibition Against Gaming	48
Grace Period	48
Authorization of Gaming	48
Approval of Gaming Equipment	48
Posting of Rules	49

Chapter VIII - Exclusion or Ejection of Individuals

List of Undesirables	50
Notice and Opportunity to be Heard	50
Prohibition Against Listed Individuals	50
Prohibition Against Certain Individuals	50

Chapter IX - Cheating

Unlawful Acts	52
Prohibition Against Electronic Aids	52

Chapter X - National Indian Gaming Commission
and Tribal-State Compacts

National Indian Gaming Commission Regulations	54
National Indian Gaming Commission Assessment	54
Compact with the State of Arizona	54

Chapter XI - Miscellaneous

Security	55
Maintenance of Code and Regulations	55
Compliance with Other Laws	55
Amendments	55
Severability	55
Designated Agent	56
Law Enforcement	56

TRIBAL GAMING ORDINANCE
for the
SAN CARLOS APACHE TRIBE

CHAPTER I

DEFINITIONS

Section 1.01 Definitions. Unless a different code meaning is clearly indicated, the terms used in this Code 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 "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 1.05 "Class II Gaming" means:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations;

(2) Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and

(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, pull-tabs, 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 1.06 "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;

(b) Any slot machines as defined in 15 U.S.C. 117 (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 1.07 "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 1.08 "Commission" means the National Indian Gaming Commission.

Section 1.09 "Electronic, computer or other technologic 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 1.10 "Electronic or electromechanical facsimile" means any gambling device as defined in 15 U.S.C. 117 (a)(2) or (3).

Section 1.11 "Game similar to bingo" means any game that meets the requirements for bingo under § 502.3(a) of this part and that is not a house banking game under § 502.11 of this part.

Section 1.12 "Gaming operation" means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor, or, under certain conditions, by another person or other entity.

Section 1.13 "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 1.14 "Indian lands" means:

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

Section 1.15 "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 1.16 "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) Approver of credit; or

(10) 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 in the gaming operation.

Section 1.16 "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 1.17 "Net revenues" means gross gaming revenues of an Indian gaming operation less--

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, excluding management fees.

Section 1.18 "Person having a direct or indirect financial interest in a management contract" means:

(a) When a person is a party to a management contract, any person having a direct financial interest in a management contract;

(b) When a trust is a party to a management contract, any beneficiary or trustee;

(c) When a partnership is a party to a management contract, any partner;

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling; or

(e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are

deemed to be persons having a direct financial interest in a management contract.

Section 1.19 "Person having management responsibility for a management contract" means the person designated by the management contract as having management responsibility for the gaming operation, or a portion thereof.

Section 1.20 "Primary management official" means

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation;

or

(c) The chief financial officer or other person who has financial management responsibility.

Section 1.21 "Secretary" means the Secretary of the Interior.

Section 1.22 "Tribal-State compact" means an agreement between a tribe and a state about Class III gaming under 25 U.S.C. 2710(d).

Section 1.23 "San Carlos Gaming Office" (also known as the "San Carlos Commission" means the San Carlos Apache Tribe Gaming Office.

Section 1.24 "San Carlos Gaming Officer" (also known as "San Carlos Commissioner" means one of the members of the San Carlos Apache Tribe Gaming Office.

Section 1.25 "Council" means the San Carlos Apache Tribal Council.

Section 1.26 "Director" means the Director of the San Carlos Apache Tribal Gaming Office appointed by the Council as the chief administrator of San Carlos Apache Tribe gaming.

Section 1.27 "Tribe" means the San Carlos Apache Tribe.

Additionally, the definition set forth on pp.2-11 of the compact signed by the Tribe and the State of Arizona under date of August 11, 1993 are adopted as if set forth at this point.

Section 1.28 Words and Terms. Tense, number and gender. In constructing the provisions of this Code, save when 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 1.29 "Working Days" means Monday through Friday except for Federal or Tribal holiday.

CHAPTER II

ORDINANCE

Section 2.01 Purpose.

The San Carlos Apache Tribe (hereinafter "Tribe"), empowered by its Constitution and Bylaws to enact ordinances, hereby enacts this ordinance in order to set the terms for Class II and Class III gaming operations on tribal lands.

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 FR 12382-12393, April 9, 1993) is hereby authorized. Additionally, all forms of Class III gaming set forth in the Compact between the Tribe and the State of Arizona under date of August 11, 1993 are authorized.

Section 2.03 Ownership of Gaming.

The Tribe shall have the sole propriety interest in and responsibility for the conduct of any gaming operation authorized by this ordinance (unless the Tribe elects to allow individually owned gaming).

Section 2.04 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. § 522.4(b)(6).

Section 2.05 Use of Gaming Revenues.

A. Net revenues from Class II and Class III gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710 (b)(3).

Section 2.06 Audit.

A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian 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.

Section 2.07 Protection of the Environment and Public Health and Safety.

Class II and Class III gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

Section 2.08 Licenses for Class II Key Employees and Primary Management Officials.

The Tribe 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 Class II gaming enterprise operated on Indian lands:

A. Definitions:

For the purposes of this section, the following definitions apply:

1. 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) approver of credit; or
- (10) 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 in the gaming operation.

2. Primary management official means

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) to hire and fire employees; or

(2) to set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

B. 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 investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a 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 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 Tribe shall notify in writing 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.

C. Background Investigation: No license shall be granted to any person or entity who has been determined to be a 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 by the carrying on of the business and financial arrangements incidental thereto.

1. Class II Gaming:

(a). The Tribe 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 drivers 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 (1)(b) of this section;

(4). Current business and residence 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 business 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 (1)(h) or (1)(i) 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 Tribe deems relevant;

and

(14). Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. § 522.2(h).

Section 2.09 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

Tribe shall conduct an investigation sufficient to make a determination under Section 2.11. below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

1. Pursuant to Section 5 of the Compact between the Tribe and the State of Arizona entered into on August 11, 1993, the procedures for tribal licensing and state certification of all gaming employees for the conduct of Class III gaming are adopted and incorporated by reference in this paragraph.

2. 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:

- a. Criminal history check;
- b. Civil history check;
- b. Financial and credit check;
- c. Reference check;
- d. Previous business and employment check;
- e. Relative check;
- f. Business and personal associates check;
- g. Educational verification;
- h. Document the disposition of all potential problem areas noted and disqualifying information needed.

The data for such investigations is set forth in the attached form marked Exhibit "A" to this ordinance.

3. The Tribal Gaming Office is primarily responsible for the conduct of the background investigations and suitability determinations in consultation with the National Indian Gaming Commission;

4. The Director of the Tribal Gaming Office in association with the State of Arizona shall be responsible for conducting,

reviewing and either approving or disapproving the investigative work;

5. The Director of the Tribal Gaming Office is responsible for reporting the results of the background investigations to the National Indian Gaming Commission;

6. The San Carlos Apache Tribal Police Department will obtain the fingerprints for processing;

7. Suitability determination and selection of Gaming Office members is more specifically set forth in the rules and regulations of the Tribal Gaming Office attached as Exhibit "C" to these documents;

8. The investigative report shall set forth, in detail, the:
- a. Steps taken in conducting the background investigation;
 - b. Results obtained;
 - c. Conclusions reached;
 - d. The basis for those conclusions.

Section 2.10 Application Fee. The Gaming Office shall set a fee for applications, background investigations and licenses. All such fees shall be made payable to the San Carlos Apache Tribe and delivered to the San Carlos Apache Tribe Accounting office.

Section 2.11 Eligibility Determination. The Tribe 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 operation. If the Tribe 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 tribal gaming operation shall not employ that person in a key employee or primary management official position.

Section 2.12 Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission.

1. When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe 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 2.11.

2. The Tribe shall forward the report referred to in Section 2.13 to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

3. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

Section 2.13 Report to the National Indian Gaming Commission.

1. Pursuant to the procedures set out in section 2.09, the Tribe 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:

- a. Steps taken in conducting a background investigation;
- b. Results obtained;
- c. Conclusions reached; and
- d. The bases for those conclusions.

2. The Tribe shall submit, with the report, a copy of the eligibility determination made under Section 2.11.

3. If a license is not issued to an applicant, the Tribe:

- a. Shall notify the National Indian Gaming Commission; and;
- b. 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.

4. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations 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 2.14 Granting a Gaming License.

1. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the tribe 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 tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.

2. The Tribe 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 1. of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

3. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe

has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

Section 2.15 License Suspension.

1. If, after the issuance of a gaming license, the Tribe 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 subsection 3. above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

2. The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

3. After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission of its decision.

Section 2.16 Class III Gaming. In addition to the above, the Tribal-State licensing and certification requirements (§ 4) and Procedures for Tribal Licensing and State Certification (§ 5) of the Compact between the Tribe and the State of Arizona set forth in the Compact signed on August 11, 1993 are adopted and incorporated herein by reference.

Section 2.17 Repeal.

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.

CHAPTER III
ADMINISTRATION AND ENFORCEMENT

Section 3.01 Unauthorized Gaming. Any Indian who commits any act of unauthorized gaming on this reservation or any Indian land shall be guilty of a crime 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 this reservation or on any Indian land, that fully complies with the provisions of this Code, shall not be subject to any criminal penalties.

Section 3.02 Ownership - Revenues to Benefit Tribe. The Tribe shall have the sole proprietary interest in, and the sole responsibility for, the conduct of the gaming activity. 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 establishment shall be operated so as to produce the maximum amount of net profit to the Tribe. The Tribes 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 the gaming establishment 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 of the Interior.

Section 3.03 Establishment of Gaming Office. The San Carlos Apache Tribal Gaming Office is hereby established. The Gaming Office shall consist of five (5) members appointed by a majority vote of the Council. A gaming officer shall serve for three (3) years and may be removed from office prior to the end of his term only for cause and by a unanimous vote of Council following a public hearing. In order to establish an annually staggered Gaming Office appointment schedule similar to that of the Council, the first gaming officers shall be appointed by the Council as follows: three (3) members shall serve three (3) year terms, two (2) shall serve two (2) year terms and two (2) 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 shall be filled within thirty (30) days by the Council.

Section 3.04 Restrictions on Gaming Officers. Gaming officers 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 Gaming Code. Gaming officers shall not gamble in the gaming establishment nor have any personal financial interest in any gambling by any patron.

Section 3.05 Compensation for Gaming Officers. Gaming officers shall be compensated at a rate to be established annually by the Gaming Office, and approved by the Tribal Council. Gaming officers

shall be reimbursed for actual expenses incurred on Gaming Office 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 3.06 Selection of Chairperson. The Gaming Office shall select annually from its membership a chairperson, who shall have the power to convene special meetings of the Gaming Officers upon forty-eight (48) hours written notice to members of the Gaming Office. If the chairperson determines that a bona fide emergency exists, the chairperson may conduct special meeting(s) by telephone.

Section 3.07 Meetings Open to Public. General meetings of the Gaming Office 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 2.09, matters dealing with personnel, security or the fiscal integrity of the gaming operation shall be conducted in executive session and not be open to the public.

Section 3.08 Quorum - Majority Vote. A quorum shall consist of three (3) members of the Gaming Office. All decisions shall be made by a majority vote of the Gaming Officers, unless indicated otherwise in this Code.

Section 3.09 Monthly Report. The Gaming Office shall make monthly reports to the Council within thirty (30) days after the close of the month for which the information is being required. The report shall include a full and complete statement of gaming revenues paid to the Tribe, expenses and all other financial transactions of the Gaming Office and a summary of all licensing and enforcement actions.

Section 3.10 Powers. The Gaming Office shall exercise all powers necessary to effectuate the purposes of this Code. The Gaming Office may exercise any proper power and authority necessary to perform the duties assigned to it by this Code, and is not limited by the enumeration of powers in this chapter. The Gaming Officers shall meet with the Director not less than once each month to make recommendations and set policy, to approve or reject reports of the Director and transact other business that may be properly brought before it. The Gaming Office shall promulgate rules and regulations for the operation of any gaming establishment and shall hear and resolve all disputes regarding any provision of the Code. In all decisions, the Gaming Office shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of gaming and ancillary activities of the gaming operation. The Gaming Office shall have the power and authority to deny any application; to limit, condition, suspend, or restrict any license; make a finding of suitability or approval of a license, or find suitable the imposition of a fine upon any person licensed, for any cause deemed reasonable by the Gaming Office.

Section 3.11 Prior Notice of Actions. In adopting, amending, and repealing regulations, the Gaming Office shall give prior notice of the proposed action to all licensees and other persons whom the Gaming Office or Director has reason to believe have a legitimate and bona fide interest in such proposed action. Said notice shall inform such persons as to the general nature of the proposed action and advise them as to the manner in which comments on said proposed action shall be received by the Gaming Office. In emergencies, the Gaming Office may summarily adopt, amend or repeal any regulation if at the time the Gaming Office determines such action is necessary for the immediate preservation of the public peace, health, safety, morals, and good order or general welfare, together with a statement of facts constituting the emergency; provided the Gaming Office shall schedule such emergency action for

a regular hearing within sixty (60) days after any such emergency meeting.

Section 3.12 Request for Gaming Office Action. Any person who is determined by the Gaming Office or Director to be a bona fide interested party may file a petition in a manner and form approved by the Gaming Office requesting the adoption, amendment or repeal of a regulation. Upon receipt of the petition, the Gaming Office shall within thirty (30) days deny the request in writing or schedule the matter for action pursuant to this chapter.

Section 3.13 Voting on Licensing. Any Gaming Office vote resulting in approving, disapproving, revoking, suspending, limiting or conditioning a license under this Code shall be by ballot only; provided that in an emergency a phone vote may be polled pursuant to Gaming Office Regulations. Should an applicant disagree with the determination of the Gaming Office, the Gaming Office shall hold a hearing to review its decision, within three (3) working days from the date an applicant files his/her disagreement with the Gaming Office. At the hearing, the burden shall be the applicant to show cause why the Gaming Office's disagreement was incorrect.

Section 3.14 Gaming Office Findings. Following such hearing, the Gaming Office shall, within three (3) working days reach a determination concerning:

(a) the accuracy of the preliminary certification of facts; and

(b) whether the license in question should be granted, continued, suspended, revoked, conditioned, or limited; and

(c) whether or not any other action recommended to the Gaming Office including, but not limited to forfeitures, should be taken.

Section 3.15 Notification of Gaming Office Decision. Within three (3) working days following this determination, the Gaming Office shall inform the subject in writing of that determination.

Section 3.16 Right to Appeal. Unless otherwise contractually agreed to, the subject shall have the right to appeal the determination of the Gaming Office to the Tribal Court. Such appeal must be filed with the Tribal Court in written form on or before the tenth (10th) day following receipt of the written determination of the Gaming Office. A determination of such appeal by the Tribal Court shall be final and no further appeal may be had. In any appropriate case which has been referred to the Tribal Court for final action. The Tribal Court shall review, de novo, the determination of the Gaming Office. The Court's action shall be final and no further appeals may be had.

Section 3.17 Appointment of Director. The Council, with the advice and consent of the Gaming Office, shall appoint a Director who shall be responsible for the day-to-day management of the affairs of the Gaming Office 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 Gaming Office 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 the gaming activity. The Director may not gamble in the gaming

establishment nor have any personal financial interest in any gambling by any gaming establishment patron.

Section 3.18 Director's Contract. The Director shall be hired on a contract for a period of at least two (2) years. The terms of the contract will be negotiated with the Gaming Office and approved by the Council. The Director's compensation shall be part of the negotiations. Compensation for the Director shall not be based, in whole or in part, on the profitability of the gaming operation.

Section 3.19 Termination of Director. The Director shall be terminated immediately and without the necessity of a vote of the Council upon the Director's conviction of 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 the Tribal Court of any charge that the Council finds relates to the Director's honesty or ability to fulfill his duties. If the Director is convicted of violating any part of this code, he shall be immediately terminated. Additionally, the Director may be 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 gaming operation into disrepute.

Section 3.20 Duties of Director. The Director shall, subject to the approval of the Gaming Office, perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes of this Code relating to the regulation of all gaming activity. In all decision, the Director shall act to promote and ensure integrity, security, honesty, and fairness of the operation and administration of all gaming activity. The Directors' 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 Gaming Office and the 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 complete 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 activity is conducted in a manner which adequately protects the environment and the public's health and safety;

(d) The Director will ensure that background investigations are conducted pursuant to section 2.09 on all primary management officials and key employees of any gaming establishment and that oversight of such officials and their management is conducted on an ongoing basis. The Director will recommend to the Gaming Office, which shall have final authority, on the granting of tribal licenses for primary management officials and key employees. The Director shall immediately notify the National Indian Gaming Commission of the issuance of such 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 licenses.

(e) Hiring, pursuant to the approval of the Gaming Office, such professional, clerical, technical and administrative personnel as may be necessary to carry out the provisions of this Code.

(f) Reviewing all records, documents, and anything else necessary and pertinent to enforcement of any provisions of this Code.

(g) Recommend to the Gaming Office whether sanctions should be imposed on any person subject to the jurisdiction of this Code.

Section 3.21 Right of Inspection. The Gaming Office, the Director and their agents, inspectors, and employees have the authority:

(a) To inspect and examine all premises wherein gaming is conducted or gambling devices or equipment are manufactured, sold or distributed;

(b) To inspect all equipment and supplies in, upon or about a gaming establishment, or inspect any equipment or supplies wherever located, which may, or have been used in the gaming establishment;

(c) Summarily to seize and remove from a gaming establishment (or whatever 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 business, and require verification of income and all other matters affecting the enforcement of the policy of or any of the provisions of this Code;

(e) To seize and impound any patron's winnings which the Gaming Office may have reasons to believe may have been won or obtained in violation of this Code pending a civil forfeiture hearing on such seizure;

(f) For the purpose of administration and enforcement of this Code the Gaming Office, the Director and their investigative personnel may, if deemed necessary by the Tribal Council, have the powers of the peace officer of the San Carlos Apache Tribe for purposes of this Code only;

(g) Gaming Officer 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 of process and notices in civil actions. The Gaming Office and the Director may pay such transportation and other expenses of witnesses as it may deem reasonable and proper.

Section 3.22 Confidentiality of Information. The Gaming Office 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 identify and the information.

Section 3.23 Powers of Delegation. The Gaming Office 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 Gaming Office shall establish its own budget for operations, including a budget for the Director, and acquire such furnishings, equipment, supplies, stationery, 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 Council approved budget, the Gaming Office shall employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of its duties and the operation of the Director and Gaming Office may require. At the Council's discretion, said budget may be reviewed and modified by the Council every six (6) months. Upon the end of the budget year, any surplus which might

exist shall be refunded by the Council at their discretion. The Gaming Office 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 Gaming Office 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 Gaming Office budget shall be made available to any tribal member upon demand.

Section 3.24 Sanctions. Any person who engages in activities on property subject to the provisions of this Gaming Code without a license, in violation of any license or terms imposed thereon, in violation of terms of suspension, or in violation of the Code, including any person who unlawfully trespasses upon any premises licensed by this Code without the consent of the licensee and/or the Gaming Office shall be guilty of a crime and be punished in accordance with the provisions of Section 3.26 hereinafter.

Section 3.25 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 3.26 Violations of Code - Punishment. Any violation of this Code shall be punished by a fine of no more than Five Thousand Dollars (\$5,000.00) for each separate count or violation, or one (1) year in jail, or both. Each day of violation shall constitute a separate count or violation under this Code. A violator may also be required to pay court costs, storage fees, and auction or sales fees. All property used or which may be used in activities in each and every separate violation of this Code may become the property of the Tribe; persons may be prohibited from trespassing on premises licensed under this Code, licenses may be suspended, revoked, or limited and/or establishments may be

forcibly closed. All such action shall be taken at the discretion of the Gaming Office, subject to the right of appeal to the Tribal Court. Winnings found to have been received in violation of this Code are forfeited and become the property of the Tribe.

Section 3.27 Due Process Regarding Enforcement Actions. The Gaming Office shall promulgate regulations protecting due process rights of all individuals subject to the enforcement of this Code. 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 Code; and

(c) provide the right to appeal, de novo, of any Gaming Office disciplinary or enforcement action to the Tribal Court.

Section 3.28 Patron Disputes.

(a) 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), the Gaming Facility Operator shall immediately notify the Tribal Gaming Office. The Tribal Gaming Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or

(2) Less than five hundred dollars (\$500), the Gaming Facility Operator shall inform the patron of his or her right to request that the Tribal Gaming Office conduct an investigation. Upon request of the patron, the Tribal Gaming Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

(b) Notice to Patrons. The Tribal Gaming Office shall mail 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 Office first receives notification from the Gaming Facility Operator or a request to conduct an investigation from the patron.

(c) Effective Date of Decision. The decision of the Tribal Gaming Office is effective on the date it is received by the aggrieved party as reflected on the return receipt.

(d) Review of Decision. Within thirty (30) days after the date of receipt of the written decision, the aggrieved party may file a petition with the Tribal Gaming Office requesting a review of the decision. The Tribal Gaming Office 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 Office shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in Section 3.28(b). The decision of the Tribal Gaming Office shall be final and binding upon the patron and the Gaming Facility Operator and shall not be subject to judicial review, dispute resolution or other legal action.

Section 3.29 Independence of Gaming Office. The Director, Gaming Officers, members of the 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 with 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 Office shall cooperate to the fullest extent possible with any Federal or State law enforcement agency to pursue prosecution under applicable Federal or State law.

CHAPTER IV

LICENSING OF GAMES

Section 4.01 Issuance of Tribal Gaming Licenses; Objections.

The Gaming Office shall consult with appropriate law enforcement officials concerning any gaming licenses it may issue. If, after issuance of a gaming license by the Gaming Office, reliable information is received that a primary management official or key employee does not meet the standard established under Section 2.11 of this Code, the Gaming Office shall suspend such license and, after notice and hearing, may revoke such license.

Section 4.02 Non-Transferability of License. Any license issued pursuant to the provision of this Code 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 Gaming Office.

Section 4.03 Granting of License - Majority Vote. To approve of any license issued pursuant to this Code, a quorum of the Gaming Office must be present with a majority vote of approval by said quorum required. A license will not be issued to a person whose license has previously been revoked pursuant to this code, or to whom the issuance of renewal of a license has been denied, except with the unanimous approval of the Gaming Office members.

Section 4.04 Licenses and Regulation of Class III Gaming Activities; Tribal-State Compact Required. The Gaming Office shall follow each, every, and all of the requirements for licensing and regulation of Class III gaming pursuant to the terms and conditions of its compact with the State of Arizona entered into on August 11, 1993.

Section 4.05 Failure of Applicant to Disclose Material Information. An applicant for licensing shall make true and full disclosure of all information to the Director and Gaming Office as necessary or appropriate in the public's interest or as required in order to carry out the policies of this 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 Code to fail to disclose, to mislead or to misstate any such material information to the Director of the Gaming Office, or to any licensee's employer.

Section 4.06 Temporary Employment Licenses. The Gaming Office may issue a temporary employment license to any person or entity applying for a license to work in a licensed gaming establishment 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.

Section 4.07. Parameters of Licenses. Violation of any material provision of this Code or any of the Gaming Office'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 San Carlos Apache 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 Gaming Office 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 insure a licensee's compliance with all other aspects of this Gaming Code.

Acceptance of a gaming license or renewal on the part of the licensee shall constitute the licensee's agreement to be bound by all of the regulations and conditions of the Director or Gaming Office and by the provisions of this Code as the same are now, or may hereafter be amended or promulgated, and to cooperate fully with the Director and Gaming Office. 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 4.08. Licensing of Distributors. The Gaming Office may authorize, require and issue such annual licenses as the Gaming Office by regulation may provide, 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 activity.

CHAPTER V

MANAGEMENT CONTRACTS

Section 5.01 Gaming Office Approval Required.

(a) Any management contract entered into by the Tribe for the operation and management of Class II and Class III gaming activity must be submitted to the Gaming Office for approval, but before approving such contract, the Gaming Office shall require and obtain the following information:

(i) the name, address, and other additional pertinent background information on each person or entity (including comprising such entity) having direct financial interest in, or management responsibility for such contract and in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10% or more of its issued and outstanding stock;

(ii) a description of any previous experience that each person listed pursuant to subsection (i) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming.

(iii) Any further or additional information as may be required under the Tribal/State compact entered into between the Tribe and the State;

(iv) Any further or additional information as may be required under existing rules and regulations for management contracts required pursuant to IGRA;

(b) Any person listed pursuant to subsection (a)(i) shall be required to respond to such written or oral questions that the Gaming Office may propound in accordance with its responsibilities under this section.

(c) For purposes of this Code, any reference to the management contract described in Section 5.01(a) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(d) After the Gaming Office has given its approval of a management contract, the Gaming Office shall submit such contract to the National Indian Gaming Commission for its approval. Any such contract shall be void until the National Indian Gaming Commission has approved it.

Section 5.02 Approval of Management Contracts. The Gaming Office may approve any management contract entered into by the Tribe pursuant to this Chapter only if it determines that such contract provides at least:

(a) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared by or for the Council on a monthly basis;

(b) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(c) for a minimum guaranteed payment to the Tribe that has preference over the retirement of development and construction costs;

(d) for an agreed ceiling for repayment of development construction costs;

(e) for a contract term not to exceed five years, except that, upon the request of the Tribe, the Gaming Office may authorize a contract term that exceeds five years but does not exceed seven years if the Gaming Office is satisfied that the capital investment required, and the income projections, for the particular gaming activity require additional time;

(f) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the National Indian Gaming Commission;

(g) for preference to Tribal members and non-member Indians in hiring of employees for the gaming establishment.

(h) for all which may be required by the IGRA.

Section 5.03 Percentage of Net Revenue Fees.

(a) A management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming

activity may be approved by the Gaming Office if such percentage fee is reasonable in light of surrounding circumstances. Except as provided in this Section, such fee shall not exceed 30% of the net revenues;

(b) Upon request of the Council, the Gaming Office may approve a management contract providing for a fee upon a percentage of the net revenues of a tribal gaming activity that exceeds 30% but not 40% of the net revenues if the Gaming Office and Council are satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee.

Section 5.04 Contract Disapproval. The Gaming Office shall not approve any contract if it determines that:

- (a) Any person listed pursuant to Section 5.01(a)(i):
- (i) is an elected member of the Council;
 - (ii) has been or subsequently is convicted of any felony or gaming offense;
 - (iii) has knowingly and willfully provided materially important false statements of information to the Gaming Office or the tribal officials who negotiate such contracts or has refused to respond to questions propounded pursuant to Section 5.01(b); or
 - (iv) has been determined to be a person 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 the

carrying on of the business and financial arrangements incidental thereto;

(b) The management contractor has, or has attempted unduly to interfere or to influence for its gain or advantage any decision or process of tribal government relating to gaming activity;

(c) The management contractor has deliberately or substantially failed to comply with the terms of this management contract or the provisions of this Code or any regulations adopted pursuant to this Code or the Indian Gaming Regulatory Act.

Section 5.05 Modifying or Voiding Contract. The Gaming Office, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if it subsequently determines that any of the provisions of this Chapter have been violated. If the Tribe elects to contractually agree to resolve disputes in a manner other than the 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 insure a licensee's compliance with all other aspects of this Gaming Code.

Section 5.06 Conveying Interest in Land. No management contract for the operation of a gaming activity regulated by this Code shall transfer or, in any other manner, convey any interest in land or other real property, unless specific applicable statutory authority exists and unless clearly specified in writing in said contract.

Section 5.07 Fee for Investigation Cost. The Gaming Office shall require a potential contractor to pay a fee to cover the

actual cost of the investigation necessary to reach a determination required in Section 5.04 of this Chapter.

Section 5.08 Dispute Resolution. If any dispute arises as to the proper compliance with or interpretation of the foregoing Sections and appendices, the procedures set forth in this Section shall apply.

(a) **Notice.** The party asserting noncompliance or seeking an interpretation shall serve written notice on the other party or parties. The notice shall identify the specific Ordinance provision alleged to have been violated or in dispute and shall specify in detail the factual basis for the alleged noncompliance or the proffered interpretation of the Ordinance provision for which interpretation is sought.

(b) **Voluntary Resolution.** Representatives of the Tribe and the other party or parties shall meet within ten (10) days following receipt of the notice in an effort to resolve the dispute.

(c) **Arbitration Procedures.** If the dispute is not resolved to the satisfaction of the parties within thirty (30) days after service of the notice set forth above, the dispute shall be adjudicated through arbitration in Arizona or such other place as the parties may agree as follows:

- (1) The parties shall attempt to agree upon one arbitrator with expertise in the subject matter of the dispute.
- (2) If the parties are unable to agree on an arbitrator, each party shall select an arbitrator within ten (10) days of the commencement of the arbitration and the two (2) arbitrators shall mutually appoint a third arbitrator within twenty (20) days of their appointment. If the two (2) arbitrators are unable to agree on the appointment of a third arbitrator within twenty (20) days, the third arbitrator shall

be appointed by the American Arbitration Association.

- (3) The arbitrator(s) shall confer with the parties immediately after appointment to determine an arbitration schedule including whether and to what extent discovery is required. The arbitrator(s) may set the matter for an evidentiary hearing or oral argument, or may dispose of the dispute based upon written submissions only.

(d) **Arbitration Costs.** The cost of arbitration shall be borne equally by the parties, with one-half of the expenses charged to the Tribe and one-half charged to the other party or parties. the parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration unless the decision of the arbitrator shall specify otherwise.

(e) **Arbitration Decision.** The decision of the majority of the arbitrator(s) shall be final, binding and unappealable. Failure to comply with judgment upon the award entered in such arbitration proceeding shall be deemed a breach of the Ordinance.

CHAPTER VI

AUDITING AND INTERNAL CONTROL

Section 6.01 Minimum Procedures for Control of Internal Fiscal Affairs. The Gaming Office shall promulgate regulations for control of internal fiscal audits of all gaming operations. At a minimum, those regulations shall:

(a) Prescribe minimum procedures for safeguarding the gaming operation's assets and revenues, including recording of cash and evidences of indebtedness, 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, promote operational efficiency, and encourage adherence to prescribed policies;

(b) Prescribe minimum reporting requirements to the Gaming Office;

(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 consistence, comparability and effective disclosure of financial information. Such code shall require that records be retained that reflect 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 provide 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 Gaming Office Oversight of Internal Fiscal Affairs. The Gaming Office shall, by regulation, require audits of the financial statements of all gaming operations. 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 present the financial condition of the gaming operation in accordance with generally accepted accounting principals (GAAP) and in accordance with the standards of the accounting profession established by rules and regulations of the Kansas 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 as

required by the regulations promulgated by the Gaming Office; 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 Gaming Office and management.

Section 6.03 Gaming Office's Right to Conduct Audit. The Gaming Office 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 operation.

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. If the Gaming Office finds an unlawful diversion was attempted, it shall sanction the licensee. Sanctions may include fining, revoking, suspending, limiting or refusing to renew the license.

CHAPTER VII

AUTHORIZATION OF GAMING

Section 7.01 Prohibition Against Gaming. No person duly authorized by the Gaming Office shall engage, conduct or condone any game unless such game is approved by this Gaming Office and regulations for rules governing such game have been duly promulgated by this Gaming Office.

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 Code, 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 Gaming Office may authorize the playing of any game not prohibited by the laws of the State of Arizona. The Gaming Office shall promulgate regulations for rules governing all authorized games, including regulations governing the equipment (chips, dice, cards, tiles, etc.) used in such game. Any provision in the Tribe's Compact with the State of Arizona providing for notice to and comment from the state, shall be complied with before any game is authorized by the Gaming Office.

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

(a) The Gaming Office may require a prototype or sample of any model of gaming equipment or other device used in the gaming operation 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 operation has been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the equipment or device shall be immediately reported to the Gaming Office.

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

CHAPTER VIII

EXCLUSION OR EJECTION OF INDIVIDUALS

Section 8.01 List of Undesirables. The Gaming Office may, by regulation, provide for the establishment of a list of persons who are to be excluded or ejected from any duly licensed gaming operation. The list may include any person whose presence in the gaming establishment is determined by the Gaming Office 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 Gaming Office shall promulgate regulations providing fair notice and opportunity to be heard to any individual whose name is being contemplated by the Tribe 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 Gaming Office to place his name on the list to Tribal Court.

Section 8.03 Prohibition Against Listed Individuals. It shall be a violation of this Code for any licensee to knowingly fail to exclude or eject from the gaming establishment any persons placed on the list referred to in section 8.01. It shall be a violation of this Code 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 duly licensed gaming establishment.

Section 8.04 Prohibition Against Certain Individuals. It shall be a violation of this Code for any licensee who knowingly

fails to exclude or eject the gaming establishment 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.

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 operational 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.

Section 9.02 Prohibition Against Electronic Aids. Except as specifically permitted by the Director with approval of the Gaming Office, 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, to change the probabilities of any table game or the playing strategies to be utilized.

CHAPTER X

**NATIONAL INDIAN GAMING COMMISSION
AND TRIBAL-STATE COMPACTS**

Section 10.01 National Indian Gaming Commission - Regulations.

Notwithstanding any provision in this Gaming Code or any regulation promulgated thereunder, the Gaming Office 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 Gaming Code or any regulation promulgated thereunder, the Gaming Office 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 Compact with the State of Arizona.

Notwithstanding any provision in this Gaming Code or any regulation promulgated thereunder, the Gaming Office is fully empowered to comply with the provisions of the compact between the Tribe and the State of Arizona executed on August 11, 1993.

CHAPTER XI

MISCELLANEOUS

Section 11.01 Security. Each licensed gaming establishment must provide for reasonable security. All security personnel must be licensed by the Gaming Office.

Section 11.02 Maintenance of Code and Regulations. Each licensee shall obtain, maintain and keep current a copy of the Gaming Code and regulations promulgated thereunder, which shall be located at the premises used for the conduct of a licensed activity. The Code 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 Code, or each of the rules of the Gaming Office, shall not in way diminish the licensee's obligation to abide by the Code 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 Amendments. All provisions of this Gaming Code are subject to amendment by the San Carlos Apache Tribal Council. All regulations promulgated by the Gaming Office are subject to proper revision, repeal or amendment by the Gaming Office.

Section 11.05 Severability. If any provision of this Code, 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 11.06 Designated Agent. The designated agent for service of process as required by IGRA is the Director of the Tribal Gaming Office;

Section 11.07 Law Enforcement. The designated law enforcement agency as required by IGRA is the San Carlos Apache Police Department. The procedures set forth in Section 2.09 above describe the steps taken for a complete investigation. Criminal history checks shall be processed both on a State and Federal level.

END OF THE TRIBAL GAMING CODE OF THE SAN CARLOS APACHE TRIBE DULY ADOPTED THIS _____ DAY OF _____, 199_.

TRIBAL CHAIRPERSON