February 26, 2014

By First Class Mail

Mr. Zeke Fletcher, Esq.
Fletcher Law PLLC
Boji Tower
124 W. Allegan Street
Suite 1400
Lansing, MI 48823

Re: Amendment to Gun Lake Tribal Gaming Ordinance

Dear Mr. Fletcher:

This letter responds to your request on behalf of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe) for the National Indian Gaming Commission Chairman to review and approve the Tribe's amendment to its gaming ordinance.

The ordinance amendment was passed on October 10, 2013, by the Tribal Council of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, through Tribal Council Resolution 13-819 and submitted to NIGC for approval on December 2, 2013. The amendment changes requirements to the composition of the Gaming Commission and specifies background check requirements for gaming commissioners and staff.

Thank you for bringing the amendment to my attention and for providing a copy of it. The amendment is approved, as it is consistent with the requirements of the Indian Gaming Regulatory Act and the NIGC's regulations. If you have any questions, please feel free to contact Staff Attorney Jennifer Ward at (202) 632-7003.

Sincerely,

Jonodev Chaudhuri
Acting Chairman

Match-E-Be-Nash-She-Wish
Band of Pottawatomi Indians
GUN LAKE TRIBE

David K. Sprague
Tribal Chairman

Federally Acknowledged
August 23, 1999

Service Area: Allegan, Barry
Kalamazoo, Kent, and
Ottawa Counties

RESOLUTION 13-819
OF THE MATCH-E-BE-NASH-SHE-WISH BAND
OF POTTAWATOMI INDIANS

A RESOLUTION APPROVING AND ADOPTING AMENDMENTS TO THE GUN LAKE TRIBAL GAMING ORDINANCE AND AUTHORIZING SUBMISSION OF THE AMENDMENTS TO THE NATIONAL INDIAN GAMING COMMISSION

WHEREAS, The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan is a federally recognized Indian Tribe organized pursuant to a Constitution approved by the Tribal Membership on June 19, 2000; and

WHEREAS, The Governing Body of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan is the Tribal Council; and

WHEREAS, The Tribal Council of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan is authorized pursuant to Article VII, Section 1(l) of the Tribal Constitution to enact resolutions or ordinances; and,

WHEREAS, The Tribal Council is authorized pursuant to Article VII, Section 1(m) of the Tribal Constitution to govern the conduct of Indians and others as it relates to gaming conducted on the Tribe's reservation pursuant to the Indian Gaming Regulatory Act, Public Law 100-497, as codified in 25 U.S.C. § 2701 *et seq.*, and its implementing regulations promulgated by the National Indian Gaming Commission ("NIGC"); and

WHEREAS, The Tribal Council adopted the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Gaming Ordinance on July 17, 2003, which was duly approved by the NIGC on August 6, 2003, and the Council adopted amendments on December 2, 2009 via Resolution 09-551, which amendments were approved by the NIGC on February 22, 2010, and the Council adopted amendments on February 14, 2013 via Resolution 13-761, which amendments were approved by the NIGC on April 29, 2013, the Council adopted amendments on July 3, 2013 via Resolution 13-802, which amendments were approved by the NIGC on September 3, 2013; and

WHEREAS, The Tribal Council finds it necessary to amend said Gaming Ordinance to provide amendments the composition of the Gaming Commission and background investigations for the Gaming Commissioners.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians hereby approves and adopts the amended Gaming Ordinance as attached.

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www.mbpi.org

BE IT FURTHER RESOLVED, that the Tribal Chairman is hereby authorized to take all necessary action required to obtaining the full Federal approval of the above amendment to the Gaming Ordinance, with advise of legal counsel, and is permitted to approve (without further Tribal Council action) further non-material amendments suggested by the NIGC, if any.

BE IT FURTHER RESOLVED, that the amended sections of the Gaming Ordinance shall be effective immediately.

CERTIFICATION

We, the undersigned duly elected officials of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, do hereby certify that on October 10, 2013, the foregoing Resolution was adopted at a regular meeting of the Tribal Council with a quorum present by a vote of 5 for; 0 against; 1 abstaining; and 1 absent.

CHAIRMAN	10-10-13 Dated
VICE-CHAIRMAN	10-10-13 Dated

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MATCH-E-BE-NASH-SHE-WISH BAND

OF POTTAWATOMI INDIANS OF MICHIGAN

GUN LAKE TRIBAL GAMING ORDINANCE[1]

Section 1. PURPOSE.

1.01 **Governance**. The Tribal Council of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (hereinafter "Tribe" or "MBPI"), empowered by the Tribal Constitution to enact ordinances, hereby declares that the purpose of this Ordinance is to govern and regulate the operation and conduct of all Class II and Class III gaming activities on lands within the jurisdiction of the Tribe as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2703(7)(A) and 25 U.S.C. Section 2703(8) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. § 502.3 and § 502.4 is hereby authorized.

1.02 **Importance**. The gaming industry of the Tribe is vitally important to the economy of the Tribe and the general welfare of Tribal members. Protecting this gaming industry requires that the public maintain confidence and trust in the integrity of gaming activities, which activities must be free of criminal and corruptive elements.

1.03 **Strict Regulation**. To prevent improper or unlawful conduct in the course of gaming activities and to promote the development of a balanced tribal economy by dedicating all of the net revenues from gaming activities to the public purposes of the Tribe, including the support of the Tribe's governmental programs and Tribal members, strict regulation of all persons, locations, practices, associations and activities must be maintained. Therefore, all establishments where gaming is conducted and where gaming devices are operated must be formally licensed, controlled and operated to protect public safety, morals, good order and general welfare, and to foster the stability and success of gaming.

Section2. DEFINITIONS. For purpose of this Ordinance:

2.01 "**Act**" means the Indian Gaming Regulatory Act, Pub.L. 100-497, 25 U.S.C. Sections 2701, *et seq.*, and 18 U.S.C. §§ 1166 – 1168.

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[1] Legislative History – Enacted by Tribal Council Resolution 03-375A (July 17, 2003); Amended by Tribal Council Resolution 09-551 (December 2, 2009); Amended by Tribal Council Resolution 13-761 (February 14, 2013); Amended by Tribal Council Resolution 13-802 (July 3, 2013); Amended by Tribal Council Resolution 13-819 (October 10, 2013).

2.02 "**Applicant**" means any person who has applied for a license under the provisions of this Ordinance.

2.03 "**Application**" means a request for the issuance of a license under the provisions of this Ordinance.

2.04 "**Banked Card Games**" means a card game in which anyone who is a participant in the game, takes on all players, collects from all losers, and pays all winners.

2.05 "**Class I gaming**" means social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in conjunction with, tribal ceremonies or celebrations.

2.06 "**Class II gaming**" means:

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

(A) play for prizes with cards bearing numbers or other designations;

(B) cover numbers or designations when objects, similary numbered or designated, are drawn or electronically determined; and

(C) win the gaming by being the first person to cover a previously designated pattern of such cards.

2.06.2 If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo.

2.06.3 Nonbanking card games that are:

(A) explicitly authorized by the State of Michigan; or

(B) are not explicitly prohibited by the laws of the State of Michigan and are played at any location in the State of Michigan;

(but only if such card games are played in conformity with those laws and regulations (if any) of the State of Michigan regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.)

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

2.07.1 Anybanked card games and/or casino games such as roulette, craps and keno;

2.07.2 Any electronic or electromechanical facsimiles of any game of chance or slot machines of any kind;

2.07.3 Any sports betting and pari-mutuel wagering including but not limited to wagering on horse racing, dog racing or jail alai; and

2.07.4 Lotteries.

2.08 "**Commission**" means the MBPI Tribal Gaming Commission.

2.09 "**Compact**" means such agreement governing the conduct of Class III gaming on MBPI's Reservation or Indian Lands as may be entered into pursuant to the Indian Gaming Regulatory Act between the State of Michigan and the MBPI, and approved by the Secretary of the Interior, or such procedures promulgated by the Secretary of the Interior pursuant to the Indian Gaming Regulatory Act governing the conduct of Class III gaming on MBPI's Reservation or Indian Lands.

2.010 "**Director**" means the Executive Director of the Commission established pursuant to this Ordinance.

2.11 "**Electronic, computer or other technologic aid**" means any machine or device that:

2.11.1 Assists a player or the playing of a game, including, but not limited to, machines or devices that:

(A) broaden the participation levels in a common game;

(B) facilitate communication between or among gaming sites; or

(C) allow a player to play a game with or against other players rather than with or against a machine;

2.11.2 Is not an electronic or electromechanical facsimile; and

2.11.3 Is operated in accordance with applicable Federal communications law. Examples of electronic, computer or other technologic aids include, but are not limited to, pull tab dispensers and/or readers, telephones, cables, televisions, screens, satellites, bingo blowers, electronic player stations, or electronic cards for participants in bingo games.

2.12 "**Electronic or electromechanical facsimile**" means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all the characteristics of the game, except when, for bingo, lotto,

and other games similar to bingo, the electronic or electromechanical format allows multiple players to play with or against each other rather than with or against a machine.

2.13 "**Game**," "**Gaming**" and "**Gambling Game**" means any game played with cards, dice, equipment or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fan-tan, blackjack (21), seven-and-a-half, Klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, any banking or percentage game or any other game or device approved by the Commission, but does not include games in which prizes, chance, or consideration are absent.

2.14 "**Game Classification**" means the determination made by the Commission to identify not only Class II games and Class III games as defined by the IGRA, the Compact, 25 CFR Parts 502.3 and 502.4, and this Ordinance, but also to identify games as Class II or Class III pursuant to the definitions of "electronic, computer or other technologic aid," "electronic or electromechanical facsimile" and "other games similar to bingo."

2.15 "**Gaming Authority**" or "**Authority**" or "**Gaming Operation**" means the Gun Lake Tribal Gaming Authority created by the Gun Lake Tribal Gaming Authority Ordinance to own and operate the Tribe's gaming facilities, which is a wholly owned unicorporated instrumentality of the Tribe. For avoidance of doubt, the Gaming Authority is, and means, the Gaming Operation as defined at 25 C.F.R. § 502.10.

2.16 "**Gaming Device**" means a microprocessor-controlled electronic device which allows a player to play games of chance, some of which are affected by skill, which the device is activated by the insertion of a coin, currency, tokens or by the use of credit, and which awards game credits, cash, tokens, replays or a receipt that can be redeemed by the player for any of the foregoing. Game play may be displayed by video facsimile, or mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence, or lack thereof, of a winning combination and pay out, if any.

2.17 "**Gaming Employee**" means any key employee, any primary management official or any other person employed by the Authority who performs gaming related activities, including those persons whose employment duties require or authorize access to restricted gaming related areas of the gaming facility.

2.18 "**Gaming Employee License**" means a license issued by the Commission or the Director, pursuant to Section 12 of this Ordinance, permitting a person to be employed as a gaming employee.

2.19 "**Gaming Equipment**" means any machine, equipment or device which is specially designed or manufactured for use in the operation of any Class II or Class III gaming activity, including any gaming device.

2.20 "**Gaming Facility**" or "**Gaming Facilities**" means the buildings or structures in which Class II gaming or Class III gaming is conducted on the Reservation or Indian Lands.

2.21 "**Gaming Facility Operational License**" means a license issued by the Commission pursuant to Section 11 of this Ordinance, permitting the Authority to conduct gaming operations at a gaming facility compliant with 25 C.F.R. Part 559.

2.22 [Intentionally omitted].

2.23 "**Gaming-Related Activities**" means any type of employment activity that causes direct interaction with those items falling within the definition of the term "Game", "Gaming" and "Gambling Game" including, but not limited to, administrative and financial activities for the revenue associated with gaming.

2.24 "**Gaming Services**" means:

2.24.1 The providing of any goods or services (except professional, legal and accounting services to a gaming facility, a gaming operation, or to the Authority), not covered by Section 2.24.2, the value of which exceeds $150,000 annually;

2.24.2 The providing of any amount of gaming equipment or gaming devices to MBPI or the Authority in connection with the operation of Class II or Class III gaming in the gaming facility;

2.24.3 The extension of or guarantee of any financing for the Authority or a gaming facility by any person or entity other than MBPI or another federally-recognized Indian tribe (provided the tribe has been subject to NIGC regulation for a minimum of five (5) years, and has no record of NIGC violations) provided, however, a Chartered Institutional Investor that provides the extension of or guarantee of any financing for the Authority does not constitute Gaming Services (and therefore is not required to be licensed pursuant to this Ordinance). For purposes of this Ordinance "Chartered Institutional Investor" shall mean "any person or firm that qualifies as an "accredited investor" under the regulations of the United States Securities and Exchange Commission which extends credit or buys loans in the ordinary course of business;

2.24.4 To the extent not covered by Section 14, the provision of any services by a management contractor, or

2.24.5 The construction of gaming facilities or ancillary gaming facility properties.

2.25 "**Gaming Support Employee**" means any employee or person employed by the Authority who performs employment duties that are not gaming related activities and do not meet the definition of "Gaming Employee," including employees having access to non-public areas but not restricted related areas of the gaming facility. Gaming Support Employees are not subject to the Gaming Employee licensing requirements of this Ordinance.

2.26 "**Indirect Financial Interest**" means when a corporation is a party to a contract, any person who is a director or who holds at least 5% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the corporation is publicly traded or the top ten (10) shareholders for a privately held corporation.

2.27 "**Indian Lands**" means lands within the limits of the Tribe's Reservation; or land over which the Tribe exercises governmental power that is either held in trust by the United States for the benefit of the Tribe or individual; or held by the Tribe or individual citizen of the Tribe subject to restriction by the United States against alienation.

2.28 "**Key Employee**" means:

2.28.1 A person who performs one or more of the following functions:

(D) Bingo Caller;

(E) Counting Room Supervisor;

(F) Chief of Security;

(G) Custodian of gaming supplies or cash;

(H) Floor Manager or Management;

(I) Pit Boss;

(J) Dealer;

(K) Croupier;

(L) Approver of Credit; or

(M) Custodian of gaming devices including persons with access to cash and accounting records within such devices;

2.28.2 If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or

2.28.3 If not otherwise included, the four most highly compensated persons in the Authority.

2.28.4 Any other person designated by the Authority as a key employee

2.29 "**MBPI**" means the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, also referred to as the "Tribe".

2.30 "**Management Contract**" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711, and 25 C.F.R. § 502.15.

2.31 "**Management Contractor**" means a natural person or entity that has entered into a management contract with MBPI or the Authority which has been approved pursuant to 25 U.S.C §§ 2710(d)(9), 2711 and Section 14 of this Ordinance.

2.32 "**Manufacturer**" means a natural person or entity that manufactures Gaming Devices and/or component parts thereof as defined herein for use or play in the Gaming Facilities.

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

2.34 "**National Indian Gaming Commission Facility Licenese**" means the license granted by the Commission and submitted to the NIGC pursuant to 25 CFR Part 559.

2.35 "**Net Revenues**" means the gross gaming revenues of an Indian gaming operation less amounts paid out as, or paid for, prizes and total gaming related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

2.36 "**Ordinance**" means this Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Ordinance to govern the operation of gaming.

2.37 "**Other games similar to bingo**" means any game played in the same location as bingo constituting a variant on the game of bingo and permits players to compete against each other for a common prize or prizes.

2.38 "**Person**" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When "person" is used to designate the violator or offender of any law, it includes a corporation, partnership, or any association of persons.

2.39 "**Primary Management Official**" means:

2.39.1 The person having management responsibility for or under a management contract; or

2.39.2 Any person who has the authority to:

(A) hire and fire employees; or

(B) set up working policy for the Authority; or

2.39.3 The chief financial officer or other person who has financial management responsibilities for the Authority.

2.39.4 Any other person designated by the Authority as a primary management official.

2.40 "**Principal**" means, with respect to any Person:

2.40.1 Each of its officers and directors;

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

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

2.40.4 Each of its shareholders who own more than ten percent of the shares of the corporation, if a corporation;

2.40.5 Each person other than a chartered banking institution who has provided financing for the entity constituting more than ten percent of the total financing of the entity; and

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

2.41 "**Property**" means, for purposes of Section 11, any tangible property or a fixed and certain interest in intangible property that is held, issued or owed in the course of a holder's business or by a government, governmental subdivision, agency or instrumentality, and all income or increments therefrom. The term includes, without limitation, property that is referred to as or evidenced by:

2.41.1 Money or a check, draft, deposit, interest or dividend;

2.41.2 A credit balance, customer's overpayment, security deposit, refund, credit memorandum, unpaid wage, mineral proceeds or unidentified remittance;

2.41.3 Stock or other evidence of ownership of an interest in a business association or financial organization;

2.41.4 A bond, debenture, note or other evidence of indebtedness;

2.41.5 Money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;

2.41.6 An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance or health and disability insurance; and

2.41.7 An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits

2.42 "**Reservation**" means all lands within the limits of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Reservation, and all other lands title to which is held in trust by the United States for the benefit of MBPI or any individual member or members of MBPI or held by MBPI or an individual member of MBPI subject to restriction by the United States against alienation and over which MBPI exercises governmental power.

2.43 "**Revocation Hearing**" means a hearing conducted to consider the initial denial, or subsequent conditioning, suspension or revocation of a license.

2.44 "**State**" means the State of Michigan, its authorized officials, agents and representatives.

2.45 "**State Gaming Agency**" means the Michigan Gaming Control Board or such successor agency of the State of Michigan that the Governor may from time to time designate by written notice to MBPI as the single state agency that shall act on behalf of the State under the Compact. Nothing herein shall be construed as an admission that the State Gaming Agency has jurisdiction over MBPI or any gaming conducted on Indian Lands.

2.46 "**Tribe**" means MBPI.

Section 3. GENERAL PROVISIONS.

3.01 **Authority and Sovereign Powers and Responsibilities**. This Ordinance is enacted pursuant to the inherent sovereign powers of the Tribe. The power to enact this Ordinance is expressly delegated to the Tribal Council in Article VI, Section 4 of the Tribal Constitution.

3.02 **Title, Repeal of Prior Laws, and Effect of Repeal**. This Ordinance may be cited as the MBPI Gaming Ordinance. All titles, chapters, and sections of the Tribal Code of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, which pertain to gaming, and are in effect as of the date that this Ordinance becomes operative, are hereby repealed, and all other laws, or parts thereof, inconsistent with the provisions of this Ordinance are hereby repealed. Repeal of

this Ordinance or any portion thereof shall not have the effect of reviving any prior Law, Ordinance, or Resolution theretofore repealed or suspended.

3.03 **Classes of Gaming**. This Ordinance shall divide gaming into the following three classes: Class I, Class II, and Class III.

3.04 **Construction**. In construing the provisions of this Ordinance, unless the context otherwise requires, the following shall apply:

3.04.1 This Ordinance shall be liberally construed to affect its purpose and to promote substantial justice.

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

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

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

3.04.5 Ambiguities in this Ordinance are to be construed in favor of MBPI.

3.05 **Compliance with Bank Secrecy Act**. Any licensed gaming establishment shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508 84 Stat. 1122, 31 U.S.C. §§ 5311-5314, as amended.

3.06 **Minimum Age of Gaming Patrons**.

3.06.1 No person under the age of 21 may participate in any Class III game.

3.06.2 No person under the age of 18 may participate in any Class II game.

3.06.3 No person under the age of 18 may be physically present during the play of Class II gaming, except that children over 12 years of age may be present during the play of bingo when accompanied by a parent or legal guardian.

3.06.4 No person under the age of 18 may be physically present on or in those portions of the premises of a licensed gaming facility where Class III gaming is being played. Persons under the age of 18 may be physically present on or in those portions of the premises of a licensed gaming facility where Class III gaming is not being played or in the restaurant area of such premises.

3.06.5 This section establishes minimum age requirements. Nothing in this section shall prevent the Authority of any licensed gaming facility from imposing minimum ages higher than those established in this section.

3.07 **Protection of the Environment and Public Health and Safety**. All gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

3.08 **Savings Clause**. If a court of competent jurisdiction invalidates any section of this Ordinance the remaining sections shall not be affected thereby.

Section 4. OWNERSHIP OF GAMING; GAMING AUTHORIZED; MANAGEMENT.

4.01 **Ownership**. MBPI shall have the sole proprietary interest in and responsibility for the conduct of any gaming authorized by this Ordinance and consistent with 25 U.S.C. § 2710(b)(2)(A). No part or share of the proceeds of any Tribal gaming operation shall inure to the benefit of any person except as provided in a management contract approved in accordance with this Ordinance. No gaming employee shall have any interest in the ownership or leasing of any property, gaming device or facility used by the Authority in gaming operations.

4.02 **Gaming Management**. The Authority shall operate and manage the Tribe's Class II and Class III gaming pursuant to the Gun Lake Tribal Gaming Authority Ordinance, and in accordance with this Ordinance, IGRA, and the regulations promulged at the NIGC to implement IGRA.

4.03 **Management Contractors**. The Authority or the Tribe may contract with any person to operate each licensed gaming operation. The Authority may delegate to a management contractor any Authority power or duty as the Authority deems appropriate, subject to the Authority's supervisory authority. Any person contracted with to operate gaming shall obtain a gaming license as required by this Ordinance.

Section 5. USE OF GAMING REVENUE.

5.01 **Net Revenues**. Net Revenues from Class II and Class III gaming shall be used solely for the following purposes:

5.01.1 To fund the tribal government operations and programs;

5.01.2 Provide for the general welfare of the Tribe and its members;

5.01.3 Promote tribal economic development;

5.01.4 Donate to charitable organizations; or

5.01.5 Help fund operations of local government agencies.

5.02 **Per Capita**. 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 6. **AUDIT.**

6.01 **Annual Submission**. In accordance with 25 U.S.C. § 2710(b)(2)(C), and subject to other applicable NIGC regulations, the Authority shall cause to be conducted annually an independent audit of all gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission and the Commission.

6.02 **Applicability**. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of $25,000 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in Section 6.01, above.

6.03 **Accounting Records**. All accounting records at any licensed gaming operation shall be kept on a double entry system of accounting, maintaining detailed supporting, subsidiary records. The licensed gaming establishment shall maintain the following records for not less than five (5) years:

6.03.1 Revenues, expenses, assets, liabilities and equity for each licensed gaming operation;

6.03.2 Daily cash transactions for each Class III game, including but not limited to transactions relating to each gaming table bank, game drop box and gaming room bank;

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

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

6.03.5 Contracts, correspondence and other transaction documents related to the provision of gaming services;

6.03.6 Records of all gaming enforcement activities;

6.03.7 Internal audits prepared by internal auditors on behalf of the licensed gaming operation and provided to the Commission;

6.03.8 Personnel information on all Class II and Class III gaming employees, including personnel information involving rotation sheets, hours worked, employee profiles and background checks.

Section 7. **TRIBAL GAMING COMMISSION.**

7.01 **Establishment**. The Tribal Council hereby charters, creates and establishes the

MBPI Tribal Gaming Commission as a governmental subdivision of the Tribe.

7.02 **Authority**. The MBPI Gaming Commission is a regulatory subdivision of the Tribe, and is only vested with those authorities to ensure the Gaming Authority's compliance with applicable laws and regulations. The Commission will conduct oversight to ensure compliance with Tribal, Federal, and, if applicable, State laws and regulations regarding gaming. The Commission will serve as the licensing authority for individuals employed in the gaming operation and will administer background investigations as part of the licensing process. The Commission will also have a role in monitoring compliance with the internal control standards for the gaming operation and in tracking revenues.

7.03 **Limitation on Authority.** The MBPI Gaming Commission is a regulatory subdivision of the Tribe, and is only vested with those authorities to ensure the Gaming Authority's compliance with applicable laws and regulations. The MBPI Gaming Commission is not vested with the authority to manage the day-to-day operations of the Gaming Authority.

7.04 **Location and Place of Business**. The Commission shall be a resident of and maintain its headquarters, principal place of business and office on the MBPI Reservation. The Commission may, however, establish other places of business in such other locations as the Commission may from time to time determine to be in the best interest of the MBPI.

7.05 **Duration**. The Commission shall have perpetual existence and succession in its own name, unless dissolved by the Tribal Council pursuant to Tribal law.

7.06 **Attributes**. As a governmental subdivision of MBPI, the Commission is delegated the right to exercise one or more of the substantial governmental functions of the Tribe. In creating the Commission, the Tribal Council intends the Commission to operate on behalf of the Tribe for the sole benefit and interests of the Tribe and Tribal members. In carrying out its purposes under this Ordinance, the Commission shall function as an arm of the Tribe. Notwithstanding any authority delegated to the Commission under this Ordinance, the Tribe reserves to itself the right to bring suit against any person or entity in the Tribe's own right, on behalf of the Tribe or on behalf of the Commission, whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Commission.

7.07 **Recognition as a Political Subdivision of the Tribe**. The Tribe, on behalf of the Commission, shall take all necessary steps to acquire recognition of the Commission as a political subdivision of the Tribe, recognized by all branches of the United States Government and the various states as having been delegated the right to exercise one or more substantial governmental functions of the Tribe.

7.08 **Sovereign Immunity of the Commission**. The Commission is clothed by federal and tribal law with all the privileges and immunities of the Tribe, except as

specifically limited by this Ordinance, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Ordinance shall be deemed or construed to be a waiver of sovereign immunity of the Commission from suit, which shall only be waived pursuant to Section 7.09 below. Nothing in this Ordinance shall be deemed or construed to be consent of the Commission to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Commission.

7.09 **Waiver of Sovereign Immunity of the Commission**. Sovereign immunity of the Commission may be waived only by express resolutions of both the Commission and the Tribal Council, after consultation with its respective attorneys. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Commission. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Commission and shall specify the court having jurisdiction and the law applicable. Neither the power to sue and be sued, nor any express waiver of sovereign immunity by resolution of the Commission shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Commission other than property specifically pledged or assigned, or a consent to suit in respect to any land within the exterior boundaries of the Reservation or a consent to the alienation, attachment or encumbrance of any such land, or any Indian Lands.

7.10 **Sovereign Immunity of the Tribe**. All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence and activities of the Commission are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Ordinance, nor any action of the Commission, shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe; or to be a consent of the Tribe to the jurisdiction of the United States or of any state or any other tribe with regard to the business or affairs of the Commission or the Tribe; or to be a consent of the Tribe to any cause of action, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe; or to be a consent to suit with respect to any land within the exterior boundaries of the Reservation, or to be a consent to the alienation, attachment or encumbrance of any such land, or any Indian Lands.

7.11 **Credit of the Tribe**. Nothing in this Ordinance or any activity of the Commission shall implicate or any way involve the credit of the Tribe.

7.12 **Assets of the Commission**. The Commission shall have only those assets specifically assigned to it by the Tribal Council or acquired in its name by the Tribe or by it on its own behalf. No activity of the Commission or any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Tribe not assigned in writing to the Commission.

7.13 **Meetings**.

7.13.1 Regular Meetings. The Commission shall hold at least one (1) monthly meeting, which shall take place on the days designated by the Commission. If the meeting date falls on a holiday, it may be rescheduled to another date not in conflict with the regular meetings of the Tribal Council.

7.13.2 Special Meetings. At the request of the Chairperson of the Commission, by two (2) or more members of the Commission, or by the Director, special meetings of the Commission may be called.

7.13.3 Compensation of Commissioners. Commissioners shall be compensated at a rate to be established by the Tribal Council. In no event shall compensation be based on the profitability of gaming operations.

7.13.4 Quorum. A quorum for all meetings shall consist of three (3) members until February 18, 2014. After February 19, 2014 a quorum for all meetings shall consist of two (2) members.

7.13.5 Voting. All questions arising in connection with the action of the Commission shall be decided by majority vote. The Chairperson of the Commission shall only be entitled to vote to break a tie.

7.14 **Organization**. The Commission shall develop its own operating procedures and shall elect from within itself a Chairperson to direct meetings, a reporter to be responsible for keeping Commission minutes, handling correspondence and reporting Commission decisions, and such other officers as it deems advisable.

7.15 **Annual Budget**. The Commission shall prepare an annual operating budget for all Commission activities and present it to the Tribal Council for approval.

7.16 **Right of Entrance; Monthly Inspection**.

7.16.1 The Commission, the Director, and duly authorized officers and employees of the Commission, during regular business hours, may enter upon the premises of the Authority, any gaming operator or gaming facility for the purpose of making inspections and examining the accounts, books, papers, and documents of the Authority, any operator or gaming facility. The Authority, operator or gaming operation shall facilitate such inspection or examinations by giving every reasonable aid to the Commission or the Director and to any properly authorized officer or employee.

7.16.2 A Commissioner, a member of the Commission's staff, or the Director, shall visit each gaming facility during normal business hours for the purpose of monitoring its operation. Such visits shall be unannounced.

7.17 **Hearings; Appeals**. Pursuant to Commission regulations, the Commission may hold any hearing, and shall provide for any appeal deemed necessary in the administration of its powers and duties under this Ordinance. Whenever it shall appear to the satisfaction of the Commission that all of the interested parties involved in any proposed hearing or appeal have agreed concerning the matter at hand by written stipulation, the Commission may issue its order without convening a hearing.

7.17.1 Patron Dispute Resolution. In the event of a patron dispute, a licensee must notify the patron of his/her right to contact the Commission regarding the dispute.

7.17.2 Dispute Procedures. The Commission shall establish procedures for resolution of patron disputes and such procedures shall provide the opportunity for a hearing and an appeal process. If, however, a dispute occurs prior to the establishment of patron dispute resolution procedures by the Commission, the Commission or its designee shall be responsible for patron dispute resolution. The Commission or its designee may conduct any investigation, hold any hearing and shall provide for any appeal deemed necessary to resolve the patron dispute in accordance with section 9.01.12 of this Ordinance.

7.17.3 Hearings Involving the Management Contractor and its affiliates. The Management Contractor and its affiliates shall be provided with appropriate due process procedures, with respect to the resolution of disputes concerning the issuance, non-issuance, renewal, non-renewal, condition, suspension, denial or revocation of any licenses to the Management Contractor or any affiliate.

7.17.4 Exclusion and Reinstatement Authority. The Commission shall have the authority to issue all permanent exclusions from access to the Gaming Facility and to issue reinstatements in accordance with the provisions of this Ordinance, the IGRA, NIGC regulations and Commission regulations.

7.18 **Staff of Gaming Commission; Director**.

7.18.1 Director Appointment. The Tribal Council, with the advice and consent of the Commission, shall appoint an Executive Director of the Commission. The Director shall be responsible for the day-to-day management of the affairs of the Commission. A detailed background investigation shall be conducted on the Director before his appointment. The Commission shall maintain oversight of the Director on an ongoing basis. Preference shall be given to applicants with experience in legal gaming or law enforcement subject to applicable Tribal Preference Policies. The Director shall meet the requirements of Section 8.03. The Director shall not have any personal interest in any

gaming operations.

7.18.2 Director's Contract. The Director shall be hired pursuant to contract. The Tribal Council shall approve the terms of the contract, including compensation, and termination. Compensation for the Director shall not be based, in whole or in part, on the profitability of the gaming operations.

7.18.3 Duties of Director. The Director shall, subject to the supervision of the Commission, perform all duties, exercise all powers, and assume and discharge all responsibilities imposed by this Ordinance or delegated by the Commission. The Director's duties shall include but not be limited to the following:

(A) serve as the chief executive officer of the Commission and supervise its staff;

(B) negotiate contracts for the provision of services necessary for the operation of the Commission as approved by the Commission and expend funds for its operation within its budget as approved by the Tribal Council;

(C) provide for an adequate system that ensures that the background investigations required by this Ordinance are conducted in a manner which complies with this Ordinance and with NIGC regulations;

(D) make a decision on all applications for licenses as the authorized official for licensing, subject to appeal to the Commission;

(E) conduct hearings, investigations, inquiries and oversight of licensees, make decisions on suspension of licenses, and initiate license revocation proceedings;

(F) provide for investigation of complaints relating to activities which fall within the regulatory authority of the Commission;

(G) send notice to the NIGC of all actions or matters for which such notice is required by this Ordinance, the IGRA or NIGC regulations;

(H) prepare reports and make recommendations to the Commission about any other matter within the Commission's jurisdiction;

(I) hire, pursuant to an authorized budget, and supervise inspectors and such other staff, consultants and counsel as required for Commission responsibilities;

and

(J) be the registered agent of the Tribe for service of process by the NIGC, or other official notices pursuant to the Act.

7.18.4 Investigations. The Director, upon complaint or upon his own initiative or whenever he may deem it necessary in the performance of his duties or the exercise of his powers, may investigate and examine the operation and premises of any person who is subject to the provisions of this Ordinance. Unless notified otherwise by the Commission, in conducting such investigation, the Director may proceed either with or without a hearing of the Commission, as the Director may deem best, unless such action involves suspensions and/or revocation of gaming licenses. License suspensions and/or revocations of gaming licenses must follow the hearing procedures established under this Ordinance.

7.18.5 Review. All actions of the Director may be reviewed by the Commission, acting upon the Commission's own initiative or at the request of the Director. Subject to such review, any action of the Director may be upheld, vacated, or revised by the Commission.

7.18.6 Staff. Commission staff are considered employees of the Tribe, subject to the personnel policies of the Tribe. No person shall be hired or retained as Commission staff who are not eligible for a gaming license pursuant to the standards imposed by Section 10 of this Ordinance.

7.19 **Quarterly Reports**. The Commission shall file a quarterly report to the Tribal Council summarizing reports received from the Authority and making such comments, as it deems necessary, to keep the Tribal Council fully informed as to the status of the various gaming operations.

Section 8. COMMISSION MEMBERSHIP.

8.01 **Number of Commissioners**. The Commission shall be comprised of four (4) Tribal Gaming Commissioners until February 18, 2014. Beginning February 19, 2014, the Commission shall be comprised of three (3) Tribal Gaming Commissioners. All Tribal Gaming Commissioners shall consist of persons appointed by the Tribal Council by resolution.

8.02 **Qualification of Commissioners**. At least one (1) Commissioner shall be a member of the Tribe. No sitting member of the Tribal Council or employee of the Gaming Authority or Gaming Operation may serve concurrently as a member of the Gaming Commission. No sitting member of the Commission may act concurrently as an employee or contractor of the Gaming Commission.

8.03 **Background Check**. Prior to the time that any Commissioner takes office on the Commission, the Tribe, via the Human Resources Department, shall perform or arrange to have performed a comprehensive background check on each

prospective Commissioner, the results of which shall be transmitted to the Tribal Council. No person shall serve as a Commissioner if:

8.03.1 His prior activities, criminal record, if any, or reputation, habits or associations:

(A) pose a threat to the public interest;

(B) threaten the effective regulation and control of gaming; or

(C) enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming; or

8.03.2 He has, in any jurisdiction involving a matter which would be a crime under the provisions of the MBPI Criminal Code, or any code of similar nature, been convicted of or entered a plea of nolo contendere (no contest) to: 1) a felony or any gaming offense; or 2) to a misdemeanor within five (5) years of consideration for appointment; or

8.03.3 He has a present interest in the conduct of any gaming operation or in any business which is licensed to provide gaming services to a gaming operation of the Tribe; or

8.03.4 He or any member of his immediate family is a key employee or primary management official of, or has a financial interest in, any management contract or gaming supply business, or if he has any other personal or legal relationship which places him in a conflict of interest. The Tribal Council may waive this provision, provided, however, the Commissioner does not participate in actions, discussion, or voting where a perceived conflict of interest exists.

8.04 **Term of Office**. Each Commissioner shall serve a term of four years, or until a successor Commissioner is appointed and the terms of the Commissioner's shall be staggered to be defined by resolution of the Tribal Council. The Tribal Council's appointment of any Commissioner shall be by resolution.

8.05 **Removal of Commissioners or Vacancies**.

8.05.1 Removal.

(A) a Commissioner shall be immediately removed by the Tribal Council for any action that bars eligibility for serving in that capacity under Title Section 12 of this Ordinance.

(B) a Commissioner may be removed by affirmative vote of the Tribal Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the

honesty and integrity of the Commission or otherwise violates the letter or intent of this Ordinance.

(C) no Commissioner may be removed without notice and an opportunity to be heard before the Tribal Council, and then only after the Commissioner has been given written notice of the specific charges at least ten days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on his behalf.

(D) if the Tribal Council determines that immediate removal of a Commissioner is necessary to protect the interests of the Tribe, the Tribal Council may immediately remove the Commissioner on a temporary basis. Thereafter, the question of permanent removal shall be determined pursuant to Tribal Council hearing procedures.

(E) the Tribal Secretary shall keep a written record of all removal proceedings, together with the charges filed and the findings made therein. The decision of the Tribal Council upon the removal of a Commissioner shall be final, and is not subject to review by any court.

8.05.2 Vacancies. If any Commissioner shall die, resign, be removed, or for any reason be unable to serve as a Commissioner, the Tribal Council shall declare the position vacant and shall appoint another person to fill the position. The terms of office of each person appointed to replace a Commissioner shall be for the balance of any un-expired term for such position, provided, however, that any prospective appointee must meet the Commissioner qualifications established by this Ordinance.

Section 9. GENERAL POWERS OF THE COMMISSION; REGULATIONS.

9.01 **Powers**. The Commission shall have the powers and duties granted or imposed by this Ordinance, which shall include the following:

9.01.1 Consistent with its responsibility to regulate gaming and in conformity with revised federal regulations, amended by the NIGC on June 17, 2002, and contained at 25 C.F.R. §§ 502.7, 502.8 and 502.9, to determine proper game classifications on whether a game is Class II or Class III, or to decide whether an electronic, computer or other technological aid or other games similar to bingo is Class II gaming, or whether a electronic or electromechanical facsimile is Class III gaming.

9.01.2 To inspect and examine all premises wherein gaming is conducted or gambling or gambling devices, equipment or supplies are manufactured, sold or distributed.

9.01.3 To inspect all gaming devices, equipment and supplies in, upon or about a licensed gaming operation, or inspect any gaming devices, equipment or supplies wherever located, which may or have been used in the licensed gaming operation.

9.01.4 To summarily seize and remove and impound such gaming devices, equipment or supplies for the purpose of examination or inspection.

9.01.5 To demand reasonable access to and inspect, examine and audit all papers, books, and records of all applicants and licensees or affiliates of an applicant or licensee respecting any income produced or expenditures made by any licensed gaming operation, and require verification of income and all other matters affecting the enforcement of any provision of this Ordinance vested in the Commission.

9.01.6 To demand reasonable access to and inspect, examine and audit all papers, books, and records of any and all business conducted in a licensed gaming operation whether or not a license is required to conduct such business.

9.01.7 To refer to federal, state or Tribal prosecutors or the NIGC the results of any regulatory investigation for possible prosecution, institution of civil remedial forfeiture proceedings, or other remedial action.

9.01.8 To conduct hearings, inclusive of appeals, to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath at any such hearing. Any person making false statements in any matter before the Commission is guilty of perjury. Any process or notice may be served in the manner provided for service of process and notices in a civil action. The Commission may pay such transportation and other expenses of witnesses, as it may deem reasonable and proper.

9.01.9 To promulgate regulations as authorized in this Ordinance, subject to approval by the Tribal Council.

9.01.10 To meet at least quarterly with the Director on all matters pertaining to the regulation of gaming, including the designation of powers, duties and responsibilities between the Commission and the Director.

9.01.11 To organize itself into such functional divisions as deemed necessary or expedient from time to time.

9.01.12 To receive and investigate complaints from patrons and other persons alleging violations of this Ordinance, Commission regulations, or other applicable law.

9.01.13 To employ staff and consultants to carry out its duties, and to make

other expenditures consistent with its approved budget.

9.01.14 To keep and maintain a file of all applications for licenses, together with a record of all action taken with respect to such applications.

9.01.15 To keep and maintain such other files and records as deemed necessary.

9.01.16 To approved, review, and oversee implementation of internal controls adopted by the Authority or gaming operation.

9.01.17 To hear appeals in any matter involving gaming related disputes, including but not limited to: license suspensions, revocations, denials, or conditional licenses; issues between patrons and the Authority or gaming operations; Director decisions.

9.01.18 To take other action necessary and incidental to the enumerated powers and duties.

9.02 **Regulations.**

9.02.1 Commission regulations necessary to carry out the orderly performance of its duties and powers, along with those of the Director, shall include, but not be limited to the following:

(A) internal operational procedures of the Commission and its staff;

(B) interpretation and application of this Ordinance as may be necessary to carry out Commission duties and powers;

(C) a regulatory system for all gaming activity, including accounting, contracting, management and supervision;

(D) the findings of any reports or other information required by or necessary to implement this Ordinance;

(E) the conduct of inspections, investigations, hearings, enforcement actions and other powers of the Commission authorized by this Ordinance;

(F) procedures for conducting background investigations of gaming employees, including the designation of a law enforcement agency to take fingerprints and the process for conducting criminal history checks in accordance with 25 C.F.R. § 522.2(h), including criminal history records of the Federal Bureau of Investigation;

(G) procedures for issuing licenses;

(H) procedures for resolving gaming disputes between the gaming public and the Authority;

(I) procedures for ensuring compliance with the NIGC regulations; and

(J) appeal procedures.

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

9.02.3 The Tribal Court and any other court of competent jurisdiction shall take judicial notice of all Commission regulations adopted pursuant to this Ordinance.

Section 10. GAMING LICENSES; GENERAL PROVISIONS.

10.01 **Applicability**. This Ordinance applies to all persons engaged in gaming within the jurisdiction of the Tribe. The application for a gaming license and the conduct of gaming within the jurisdiction of the Tribe shall be deemed to be consent to the jurisdiction of the Tribe and the Tribal Court in all matters arising from the conduct of such gaming, and all matters arising under any of the provisions of this Ordinance or other applicable tribal laws.

10.02 **Types of Licenses**.

10.02.1 Gaming Operations. Each gaming facility on Indian Lands shall obtain a license. The Authority, in anticipation of conducting Class II or Class III gaming on Indian land shall apply for a license authorizing such gaming. In the event the Authority has entered into a Management Contract, the Management Contractor shall apply for such license.

10.02.2 Gaming Employees. Any person who has been hired for employment in any licensed gaming operation as a primary management official, a key employee, or other gaming employee as deemed necessary by the Commission to be licensed, shall apply for a license authorizing such employment.

10.02.3 Gaming Services. Any Gaming Service Supplier shall apply for and obtain a license before providing any Gaming Service.

10.02.4 Management Contractors. Any person awarded a management contract by the MBPI or the Authority shall comply with the requirements of Section 14 of this Ordinance, the IGRA, and the Compact before beginning gaming operations pursuant to such contract.

10.02.5 Any person seeking to license a gaming operation, or become a gaming employee, a management contractor, or provide gaming services on Indian land shall apply for, and receive, all required licenses prior to engaging in such activity.

10.03 **Non-Transferability of License**. Any license issued pursuant to the provisions of this Ordinance is valid only for the person or gaming operation at the place of business shown on the face of the license. The license is not assignable or otherwise transferable pursuant to the requirements of this Ordinance.

10.04 **Granting of License**.

10.04.1 Unless the Commission reserves the power to itself to issue certain licenses, the Director shall issue all licenses. Before a license is issued by the Commission or the Director, appropriate background investigations and suitability determinations shall be conducted pursuant to the requirements of this Ordinance, including any regulations promulgated thereto. Any decision of the Director in relation to a license is subject to appeal to the Commission.

10.04.2 No license shall be issued to a person whose license has previously been revoked pursuant to this Ordinance, or to whom the issuance or renewal of a license has been denied, except with the unanimous approval of the Commissioners.

10.05 **Background Investigations of Primary Management Officials and Key Employees; and Other Gaming Employees**.

10.05.1 The Commission or the Director shall request from each primary management official and from each key employee all of the following information, which will be used by the Commission or a designated independent investigator to conduct or cause to be conducted a background investigation for each primary management official and key employee at least as stringent as those required by parts 556 and 558 of the Code of Federal Regulations. The Commission or the Director shall perform or cause to be performed a criminal records check, conducted in accordance with state law procedures, on all applicants and licensees, for verification:

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

(B) 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;

(C) The names of current addresses of at least three personal references, including one personal reference that was acquainted with the applicant during each period of residence listed under paragraph (b) of this section;

(D) Current business and residence telephone numbers;

(E) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(F) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(G) 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;

(H) 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;

(I) 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;

(J) 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 (h) or (i) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(K) 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;

(L) A current passport quality photograph taken within the thirty (30) days prior to the submission of the background information;

(M) Any other information the Commission or Director deems relevant; and

(N) Fingerprints consistent with procedures adopted by the Commission or Director according to 25 C.F.R. § 522.2(h)

10.06 **Consultation with Law Enforcement**. As a part of the background investigation, the Director shall consult with appropriate law enforcement officials concerning any application for a license before the license is issued.

10.07 **Fees**. The Commission shall set fees for application, background investigations and licenses. All such fees shall be made payable to the Tribe for use under the Commission's approved budget.

10.08 **Ninety Day Limitation; Grace Period; Temporary License**.

10.08.1 No licensed gaming operation shall employ a gaming employee who does not obtain a license within ninety (90) days of being hired. No such person may begin employment without having had completed an application for a license. No provider of gaming services shall provide any services for a licensed gaming operation prior to the issuance of a license. If any information is received that would disqualify the applicant from receiving a license, the applicant will no longer be employed or provide gaming services.

10.08.2 For gaming employees, within twenty (20) days of the receipt of a completed application for licensing, and upon request of the applicant, the Commission may issue a temporary license to the applicant unless the background investigation undertaken discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary license shall become void and be of no effect upon: 1) the issuance of the license; 2) the issuance of a notice of denial of a license; or 3) the expiration of ninety (90) days after the applicant has begun working and no license has been issued.

10.09 **Disclosure by Applicant**. The burden of providing eligibility to receive any license is on the applicant. An applicant for licensing shall make true and full disclosure of all information to the Commission or the Director as required by this Ordinance and applicable regulations. 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 Tribe's interest, whether or not the applicant has been specifically requested to provide that information.

10.10 **Violations by Licensee**.

10.10.1 Violation of any material provision of this Ordinance or of any Commission regulation by a licensee or its agent or employee as determined by written order of the Director or the Commission after conducting a hearing shall be deemed contrary to the public health, safety, morals, good order, and general welfare of the Tribe, and shall

be deemed grounds for refusing to grant, renew, or place conditions on a license, or to suspend or revoke a license.

10.10.2 Acceptance of a 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 Commission and Director and by the provisions of this Ordinance and any amendments hereafter promulgated, and to cooperate fully with the Commission and Director. It is the responsibility of the Licensee to keep informed of the contents of this Ordinance, its regulations, and any amendments thereto. Ignorance will not excuse violations.

10.10.3 The Authority or management of any licensed gaming operation shall report to the Director any known or suspected violation of this Ordinance, regulations under this Ordinance or any criminal activity, whether related to gaming or otherwise, by any person licensed under this Ordinance as soon as the information becomes known to the Authority or management. The reports must be made regardless of whether disciplinary action or referral for prosecution is contemplated.

Section 11. LICENSING CLASS I, CLASS II, AND CLASS III OPERATIONS.

11.01 **Class I**. Class I gaming may be conducted on Indian land without a license. The Commission or the Director may investigate such activity to insure it does not constitute Class II or Class III gaming.

11.02 **Class II**. A separate gaming license shall be required for each place, facility, or location on Indian land at which Class II gaming is conducted by the Authority.

11.03 **Class III**. The Commission or the Director, as the Commission deems appropriate, may license Class III gaming if such gaming is conducted in conformity with the Act, NIGC regulations, the Compact, and this Ordinance. A Class III Gaming Facility Operational License shall be required for all tribally-owned or operated gaming operations conducted by the Authority for any gaming other than Class I or Class II gaming.

11.04 **Privately Owned Gaming Not Licensable**. No license may be issued for any gaming operation, whether for one or more occasions, which are owned or operated by any person other than the Tribe.

11.05 **Application Elements**.

11.05.1 Class II and Class III. Before issuing a license for any Class II or Class III gaming operation the Commission or the Director, as the Commission deems appropriate, shall:

(A) review the proposed gaming activity to ensure that all threshold criteria required by this Ordinance shall be met;

(B) ensure that the necessary background checks on management contractors, gaming employees, and providers of gaming services as required by this Ordinance has been, or is being, conducted;

(C) review and approve the accounting procedures to be used in such gaming activity;

(D) take any additional steps necessary to ensure the integrity of such gaming activity;

(E) for Class III gaming, review all aspects of the proposed gaming operation to ensure that it will be in compliance with the provisions of the applicable Compact; and

(F) ensure that the threshold criteria in 11.06 are met.

11.06 **Threshold Criteria for Potential Gaming Operations**. The Commission or the Director, as the Commission deems appropriate, shall issue a license for Class II or Class III gaming to any tribally-owned or tribally-operated gaming operation if:

11.06.1 The proposed gaming activity is to be located on land which was held in trust for the Tribe prior to October 17, 1988 or on trust lands which were located within or contiguous to the boundaries of the Reservation on October 17, 1988 or on lands taken into trust after October 17, 1988 which has been authorized for gaming by the Secretary of the Interior under 25 U.S.C. § 2719(b)(1);

11.06.2 The State of Michigan continues to permit such gaming for any purpose by any person, organization or entity, and such gaming is not otherwise specifically prohibited on Indian land by federal law;

11.06.3 The Tribe will have the sole proprietary interest;

11.06.4 The proposed gaming activity is authorized by a Tribal Council resolution;

11.06.5 The resolution authorizing the proposed gaming activity provides that:

(A) the revenues or the proposed gaming activity shall be audited annually and copies of those audits will be provided to the Commission and the National Indian Gaming Commission;

(B) the proposed gaming activity shall comply with all IRS reporting and filing requirements;

(C) all of the proceeds of the proposed gaming activity shall be used

for the purposes stated in Section 5;

(D) all contracts for gaming services for an amount in excess of $25,000 annually, except contracts for legal and consulting services, shall be subject to an annual independent audit;

(E) the construction or maintenance of the gaming facility and the operation of the proposed gaming activity shall be conducted in a manner which the Commission finds will adequately protect the environment and the public health and safety;

(F) all primary management officials and key employees shall pass background checks and obtain the tribal gaming employee licenses required by this Ordinance;

(G) the Commission shall have the authority to regulate the proposed gaming activity;

(H) the proposed gaming activity shall pay to the National Indian Gaming Commission such fees as federal law may require to be paid; and

(I) in the event the gaming activity is Class III gaming, such gaming activity meets all other criteria established by the Compact.

11.07 **License Application Fees**. An application fee shall be required for a Class II or Class III gaming operation. Said fee shall be set by the Commission and shall accompany the application.

11.08 **License Tax**. No annual license tax shall be required for a Class II or Class III gaming operation.

11.09 **Terms of License**. A Class II and Class III gaming license shall be valid for a period of three (3) years from the date of issuance.

11.10 **Posting of Licenses**. Each Class II or Class III gaming operation shall post the applicable tribal gaming license in a conspicuous location in the facility where such gaming is offered.

11.11 **Criteria for Gaming License Renewals**. Each gaming license must be renewed every three (3) years from the date of issuance. A renewal fee, in an amount as determined by the Commission shall be submitted with every renewal application. In order to obtain a renewal of a license, the licensee shall submit a written renewal application to the Director on the form provided by the Director. No renewal application for a gaming operation shall be approved until the annual report, required by Section 11.12 below, has been properly filed. All renewal applications submitted shall be approved in 30 days or less unless the

Commission or the Director believes, based on reasonable grounds, that the gaming has been or will be operated in violation of tribal, federal or other applicable law, or the terms and conditions of the Compact have been or will be violated.

11.12 **Annual Reports**. For each separate license issued to a gaming operation under the control of the Authority, the Authority or the gaming operation shall file an annual report with the Director between the 15th and the last day of the 12-month term of each license. The report shall be submitted to the Director on the annual report form provided by the Director and shall include, at a minimum, the following information:

11.12.1 The name, address and telephone number of the manager of gaming for the operation;

11.12.2 The names, addresses and titles of all key employees of the operation;

11.12.3 A description of the gaming activity that has been operated under the license and the total gross sales thereafter;

11.12.4 A written copy of any changes the Authority or management proposes to the gaming operation's rules;

11.12.5 A statement of the specific date or dates and time or times on which the Authority or management wishes to operate its gaming activity over the next license period;

11.12.6 The name and address of the person who will be designated as the primary management official over the next license period;

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

11.12.8 The names and addresses of any employees who the Commission or the Director may determine to be key employees during review of the application;

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

11.12.10 A sworn statement that the Authority or mangement has complied with the Internal Revenue Codes and Regulations, including written notice of customer winnings, and a statement that the Authority or management shall continue to obey all tribal and federal laws and shall hold the Commission, the Director, and the Tribe harmless for failure to do so;

11.12.11 Any location at which gambling has been conducted and any new location where gambling will be established in the next license period;

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

11.12.13 The total gross revenue of the gaming operation attributable directly or indirectly to gambling over the proceeding 12 months;

11.12.14 A sworn statement that the Authority, management and all of their gaming employees continue to consent to Tribal Court jurisdiction and service of process in all matters arising from the conduct of tribally-licensed gaming activity; and

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

11.13 **Closure of a Licensed Tribal Gaming Activity**. If the Commission or the Director finds that any tribally owned gaming operation is in violation of this Ordinance, or otherwise presents a threat to the public, the Commission or the Director, with the consent of the Commission, must immediately notify the Tribal Chairman and the Tribal Council to correct the violation. The Tribal Council may close down any gaming operation temporarily or permanently at any time with or without cause.

11.14 **Unclaimed Property; Annual Report**. In the event the Gaming Operation is in receipt of Unclaimed Property, the Gaming Operation shall file an annual report to the Commission, and shall submit an amount equal to the Unclaimed Property to the Tribe. The report must be verified and must contain:

11.14.1 A description of the property;

11.14.2 Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of $50 or more;

11.14.3 In the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

11.14.4 In the case of property held in a safe-deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the Administrator and any amounts owing to the holder; and

11.14.5 The date, if any, on which the property became payable, demandable or returnable and the date of the last transaction with the apparent owner with respect to the property.

11.14.6 Other information that the Administrator by regulation prescribes as necessary for the administration of this chapter.

11.14.7 The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year. The report shall include an amount equal to the total amount of Unclaimed Property submitted via check or wire transfer to the Tribe's general fund.

11.14.8 Upon payment or delivery of property to the Tribe, the Tribe assumes custody and responsibility for the safekeeping of the property. The Gaming Operation who pays or delivers property to the Tribe in good faith is relieved of all liability arising thereafter with respect to the property.

11.14.9 The Gaming Operation who has paid money to the Tribe pursuant to this chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Tribe shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment.

11.14.10 The Tribe may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

Section 12. LICENSING PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES; AND OTHER GAMING EMPLOYEES.

12.01 **Current and Valid Gaming Employee License Required**. Each primary management official and key employee of a Class II or Class III gaming operation must possess a current and valid gaming employee license. Any other Class II or Class III gaming employee deemed by the Commission to be licensed must possess a current and valid gaming employee license.

12.02 **Eligibility Determination**.

12.02.1 Any person determined by the Commission or the Director, as the case may be, to be qualified to receive a gaming employee license shall be issued a license. No license shall be issued unless a background investigation has been completed on the applicant.

12.02.2 The Commission or the Director, as the case may be, shall review an applicant'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 or other gaming employee for a license. If the Commission or Director determines that the licensing 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, the Commission or Director shall not license that person in a key employee or primary management official position.

12.02.3 No license shall be granted to any person who:

(A) is under the age of 18; or

(B) has been convicted of or entered a plea of guilty or no contest to a gambling related offense, fraud or misrepresentation; or

(C) has been convicted of or entered a plea of guilty or no contest to any offense not specified in subsection (B) within the immediately preceding five years. This provision shall not apply if that person has been pardoned by the Governor of the State where the conviction occurred or, if a Tribal member, is determined to be a person who is not likely again to engage in any offense or criminal course of conduct and the public good does not require that the applicant be denied a gaming license; or

(D) is determined to have participated in organized crime or unlawful gambling or 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.

12.03 **Application Procedure for License**.

12.03.1 Any person seeking employment with a gaming operation as a primary management official, key employee or gaming employee which gaming employee is deemed by the Commission or Director as needing a gaming license, shall submit an application to the Commission or Director on such form or in such manner as the Commission or Director may require.

12.03.2 The Commission or Director will conduct or cause to be conducted a background investigation on each applicant using the information

provided on the application. At a minimum, the application shall contain the following information:

(A) the applicant's name, including all other names used, current home and work addresses and telephone numbers, gender, Social Security Number, place of birth, date of birth, citizenship, and driver's license number, as well as the address of his personal residences over the past 5 years;

(B) the specific location at which the applicant is applying to be employed;

(C) the name and job description of the position the applicant is applying for;

(D) the names and addresses of the applicant's living parents, grandparents, spouse, children, brothers, and sisters, including step-, half- and in-laws;

(E) a statement as to whether or not the applicant has ever been charged with a crime, and if so, the charge, the name and address of the court involved, the applicant's explanation of the outcome of the case, including the date of final disposition;

(F) the names, current addresses and telephone numbers of three references who are not related to the applicant and who were acquainted with the applicant when the applicant was residing at each of the addresses listed in subsection (A) above;

(G) a list of the applicant's current and previous jobs over the preceding 5 years, including the name, address and telephone number of his employer, and the position held;

(H) the names and addresses and a brief description of all businesses in which the applicant currently holds, or has, within the last 5 years held, an ownership interest;

(I) a description of any existing and previous employment relationships with an Indian Tribe, including the employee position held, name of the Tribe involved and name and address of a person who can attest to the accuracy of the information provided;

(J) a description of any current or past non-employee business arrangements that the applicant has had with an Indian Tribe, including the name of the Tribe involved and the name and address of a person who can attest to the accuracy of the information provided;

(K) a statement as to whether the applicant has had any past employment with, or ownership interest in, any gaming business. If so, the applicant shall provide a written statement describing his position, the dates during which that position was held, a description of the applicant's ownership interest or job responsibilities and the name, address and phone number of the business, and a person who can attest to the accuracy of the information provided;

(L) a list of all gaming-related licenses the applicant has applied for, whether or not those licenses were granted and the name and address and phone number of the regulatory agency involved;

(M) a list of all professional or business licenses the applicant has applied for, whether or not those licenses were granted and the name, address and phone number of the regulatory agency involved;

(N) a statement of all languages written or spoken;

(O) a sworn statement that neither the applicant nor any member of his immediate family has a past or current financial interest, other than a salary interest, in any gaming-related activity anywhere. If the applicant has any relative who has such a relationship, the applicant shall fully disclose the name and the nature of the relationship;

(P) written permission giving the Commission or the Director the right to investigate the applicant's background, including the applicant's criminal record, civil and criminal judgments and credit history;

(Q) a complete disclosure of any pending or anticipated civil or criminal action against the applicant, including the name and address of the police department and court involved;

(R) a disclosure of any civil or criminal judgments rendered against the applicant, including the case number, a description of the judgment and the name and address of the court involved; and

(S) any other information that might bring into question the applicant's fitness to serve as a gaming employee of a licensed gaming operation.

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

12.03.4 Each application shall be accompanied by two (2) passport quality photographs taken within the last thirty (30) days prior to the submission of the information.

12.03.5 Each application shall be accompanied by a sworn statement that the applicant will abide by all applicable tribal and federal laws, regulations and policies.

12.03.6 Each application shall be accompanied by an application fee the amount of which shall be set by the Commission.

12.03.7 The following notice shall be placed on the application form for a key employee or a primary management official or other employee before that form is filled out by the applicant, along with a written statement that the applicant has read, understands and approves of the following Privacy Act notice and False Statement notice:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission (NIGC) members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC 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 NIGC in connection with the issuance, denial, 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 license you for 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.

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

12.03.8 Fingerprint Verification. A law enforcement officer of the Allegan County Sheriff's Department, or other designated entity qualified to

conduct backgrounding, will take and process the fingerprints of each gaming license applicant for a criminal history check to be conducted in accordance with state law procedures. A criminal history check will include a check of criminal history records maintained by the Federal Bureau of Investigation.

12.04 **Review Procedure**.

12.04.1 The Director shall forward a copy of each application to a designated tribal or state law enforcement agency and arrange for that agency to verify in writing the accuracy of the applicant's criminal record. The Director shall also contact each reference provided in the application and take other appropriate steps to verify the accuracy of the information presented and prepare a report of findings. The Commission or the Director shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning eligibility of a key employee or primary management official or other employee for employment in the gaming operation. If the Commission or Director determines that licensing 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, the Commission will not issue a license for that person. For all other gaming employees, the Commission or the Director shall review the findings resulting from the application and either grant or deny the license, if one is required by this Ordinance or advise the Authority that the applicant's information has been reviewed and there exists no barrier to employment. The applicant shall be notified in writing of the Commission or the Director's decision. Should the applicant disagree with a decision made by the Director, the applicant may request a hearing of the Commission to review the decision. After the hearing, if the Commission votes to deny a license, it shall include within this notification the specific reasons for its decision.

12.04.2 All applications, background checks and Commission or Director decisions shall be retained in the Commission files for a period of at least three (3) years from date of termination or after the denial of a license.

12.05 **Reports to NIGC; Processing of Applications for Key Employees or Primary Management Officials**.

12.05.1 At the time a primary management official or key employee is employed by a licensed gaming operation, the Director shall forward to the NIGC a completed application for a license containing the information required in this Title and conduct the background investigation required in this Ordinance.

12.05.2 Before issuing a license to a primary management official or key employee, and in no event more than sixty (60) days after a primary management official or a key employee begins work or of the effective date of this Ordinance, the Director shall forward to NIGC an investigative report on the background investigation for that primary management official or key employee, together with a copy of the determination on eligibility for licensing. The investigative report shall include the following:

(A) steps taken in conducting a background investigation;

(B) results obtained;

(C) conclusions reached; and

(D) the bases for those conclusions.

The Commission shall submit a notice of results of the applicant's background investigation to the Commission no later than sixty (60) days after the applicant begins work. The notice of results shall contain:

(A) Applicant's name, date of birth, and social security number.

(B) Date on which applicant began or will begin work as key employee or primary management official.

(C) A summary of the information presented in the investigative report, which shall at a minimum include a listing of:

(i) Licenses that have previously been denied;

(ii) Gaming licenses that have been revoked, even if subsequently reinstated;

(iii) Every known criminal charge brought against the applicant within the last 10 years of the date of application; and

(iv) Every felony of which the applicant has been convicted or any ongoing prosecution.

(D) A copy of the eligibility determination made under 25 C.F.R. § 556.5.

12.05.3 No license shall be issued to a key employee or a primary management official until the happening of the first of these events:

(A) receipt of notification that the NIGC has no objection to the

issuance of a license; or

(B) the expiration of the thirty (30) day period for NIGC review under 25 CFR § 558.3(c).

12.05.4 If, within the thirty (30) day period provided for NIGC review under 25 CFR § 558.3(c), NIGC provides the Director with a statement itemizing objections to the issuance of the license, the Director shall reconsider the application, taking into account the objections itemized by NIGC. The Director shall then make a recommendation on whether to issue a license in light of the NIGC objection(s) and refer the recommendation to the Commission for consideration. The Director or the Commission shall make the final decision whether to issue a license to the applicant.

12.05.5 Within thirty (30) days after the issuance of a license or upon any final decision not to license an applicant, the Commission shall notify the NIGC in writing of such decision. The Commission shall submit to the NIGC each notice of results and eligibility determination within sixty (60) days of each determination.

12.05.6 The Commission, ninety-one (91) days after the receipt of an application, the Director shall notify the NIGC of whether a license was issued to an applicant or not.

12.06 **Scope of License**.

12.06.1 Any gaming employee licenses issued pursuant to this Section shall be effective for only the location, job and employer contained in the application.

12.06.2 Any licensed gaming employee applying for a different gaming position shall apply to have his license transferred to the new position by requesting that transfer in writing to the Director in a manner which details the new job and location and the operator for whom he proposes to work.

12.07 **Licensing Period**. Any gaming employee license issued pursuant to this Section shall be effective until the licensee's birthday following the one (1) year anniversary of the issuing date indicated on their license. Thereafter, renewals will be on an annual basis on the licensee's birthday. Each license shall contain the licensee's photograph and shall state on its face the name of the employee, the location at which he is licensed to work, the gaming operation who employs him, the date that the license became effective and the date the license expires.

12.08 **Renewals**. A holder of a gaming employee license shall petition to have his license renewed, by applying to the Director for a renewal thirty (30) days prior to expiration of the license and the licensee is required to update all information contained in the original application.

12.09 **Requirement to Produce License Upon Request**. Any person receiving a gaming employee license must carry that license upon his person during all working hours and must produce that license upon request of any person.

12.10 **Suspension or Revocation of Gaming Employee License**.

12.10.1 Grounds for Suspension or Revocation. Subject to applicable or appropriate notice and hearing requirements, a license may be suspended or revoked for any of the following reasons:

(A) the employee has withheld pertinent information on his application;

(B) the employee has made false statements on the application;

(C) the employee has participated in gaming that was not authorized by any tribal gaming license;

(D) the employee has attempted to bribe a Tribal Council member, Commissioner or other person in an attempt to avoid or circumvent Tribal law;

(E) the employee has offered something of value or accepted a loan, financing or other thing of value from a Commissioner, a subordinate employee or any person participating in any gaming;

(F) the employee has knowingly promoted, played or participated in any gaming operated in violation of tribal or federal law or the Compact;

(G) the employee has been knowingly involved in the falsification of books or records which relate to a transaction connected with the operation of a gaming;

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

(I) the employee has refused to comply with any reasonable and lawful written order of the Director, or the Commission;

(J) the employee has been convicted of, or entered a plea of nolo contendere to, a crime involving the sale of illegal narcotics or

controlled substances; or

(K) the employee, through prior activities or criminal records (if any), or through reputation, habits and associations poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming.

12.10.2 Investigation Required. Whenever it is brought to the attention of the Commission or the Director that grounds may exist for suspending or revoking a license pursuant to subsection (1) above, the Commission or the Director shall undertake an investigation to determine whether disciplinary action should be taken pursuant to Section 12.11 below.

12.10.3 Notification from the NIGC. If, after the issuance of a gaming license, the Commission or Director 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 12 above, the Commission or the Director shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation. The Commission shall notify the NIGC of its decision after the revocation hearing within forty-five (45) days after receving such notification from the NIGC that a key employee or a primary management official is not eligble for employment.

12.11 **Basis of Suspension of Employee Gaming License**.

12.11.1 If the Commission determines that provisions listed pursuant to Section 12.10.1 were violated by any gaming employee licensee, the Commission shall provide written notice to the gaming employee licensee and afford the licensee the opportunity for a hearing prior to the issuance of any written order from the Commission suspending a gaming employee license. Only in the event the Commission determines that there exists a direct and immediate threat to the peace, safety, morals or health or welfare of the community may the Commission summarily suspend a gaming employee license pursuant to Sections 12.11.2 and 12.11.3. In the event the Commission suspends a license, the Commission may proceed to revoke a gaming employee license and affording the gaming employee licensee the opportunity to written notice and a hearing within thirty (30) days of any order suspending a gaming employee license. The Commission shall not, however, have the authority to suspend the pay of a licensee during the suspension process and/or any suspension periods. The Commission may assess penalties and/or fines against a licensee in the event such conduct of a licensee warrants penalties and/or fines.

12.11.2 Emergency Suspension. Any gaming employee license may only be temporarily and immediately suspended by written order of the Commission for not more than thirty (30) days if any of the following have occurred:

(A) the employee's continued employment as a primary management official or key employee of a game or gaming operation poses a direct and immediate threat to the peace, safety, morals or health or welfare of the community;

(B) the employee has made a material false statement in his license application;

(C) the employee has participated in gaming unauthorized by his tribal gaming license; or

(D) the employee has refused to comply with any written and lawful order of the Commission or the National Indian Gaming Commission.

12.11.3 If an employee has conducted any of the events as contained in Section 12.11.1(A) through (E) above, or that his non-compliance with this Ordinance is a direct and immediate threat to the peace, safety, morals or health or welfare of the community, the Commission shall issue a written order of temporary suspension of the employee's gaming license which notice shall be served upon the employee or any agent of the employee. The order shall state the grounds upon which it is issued and the employee's right to a hearing. The employee shall immediately cease and desist operating in his gaming employee position upon receipt of the order. The Commission shall hold a hearing on the order within 14 calendar days of its receipt of the appeal (unless the hearing date is mutually extended by the Commission and the employee). At the hearing the employee shall have an opportunity to present testimony and cross-examine opposing witnesses, and to present any other evidence as to why his license should not be revoked. The hearing shall be governed in all respects in accordance with Tribal law and Commission regulations. The burden shall be on the licensee to establish continued eligibility for a license.

12.11.4 After the hearing, the Commission shall make one of the following dispositions:

(A) revoke the license;

(B) reinstate the license;

(C) order a further suspension or not more than sixty (60) days; or

(D) reinstate the license with conditions or limitations.

12.11.5 The decision of the Commission is final. The Commission may revoke a license regardless of whether:

(A) the licensee has been disciplined or discharged by the licensed gaming operation or the Authority;

(B) criminal or civil remedial forfeiture proceedings have been initiated; or

(C) if criminal charges were brought, whether or not such charges resulted in dismal or acquittal.

Section 13. LICENSING OF GAMING SERVICE SUPPLIERS; BACKGROUND CHECK.

13.01 Gaming Service Suppliers.

13.01.1 Any person who supplies gaming services in the amount of $150,000 annually, to any licensed gaming operation shall have a license issued by the Commission or the Director, as the case may be. The $150,000 annual threshold shall not apply to those gaming services provided pursuant to Section 2.24.2.

13.01.2 Prior to entering into any agreement, the licensed gaming operation or the proposed gaming services supplier, and all persons holding a direct or indirect financial interest in the gaming services supplier or in the agreement for such services, shall provide to the Director such information as the Director shall prescribe to permit the Director to conduct a background investigation on those persons or entities. The applicant shall provide any additional information that the Director may request.

13.01.3 The Director shall review the information submitted and recommend to the Commission, based upon the applicant's prior activities, criminal record, if any, and reputation, habits and associations, whether to license the gaming services supplier. The Commission shall review the Director's recommendation and decide whether to issue the license, provided, however, any Commissioner that performs the background on a gaming service suppier shall not participate in actions, discussion, or voting where a perceived conflict of interest exists. No license shall be issued if the applicant, or any manager or person holding direct or indirect financial interest in the supplier or the proposed agreement is determined to have:

(A) participated in or have involvement with organized crime; or

(B) been convicted of or entered a plea of guilty or no contest to a gambling related offense, fraud or misrepresentation; or

(C) been convicted of or entered a plea of guilty or no contest to any other felony offense within the immediately preceding five years, unless that person has been pardoned.

13.01.4 The Authority or a gaming operation shall not contract with or purchase any equipment, supplies or services from any gaming services supplier if the supplier does not have a required gaming license or the background check reveals that such supplier, or any manager of or person holding a direct or an "Indirect Financial Interest" in such supplier or the proposed lease or contract:

(A) has been convicted of or pled guilty or no contest to any felony offense within the immediately preceding five years; or

(B) has participated in or has involvement with organized crime or unlawful gaming; or

(C) 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.

13.01.5 Any license issued pursuant to this section shall be effective for a period of one year from the date of issuance.

13.01.6 A holder of a gaming supplier license shall petition to have his license renewed, by applying to the Director or the Commission for a renewal thirty (30) days before the original license has expired and updating all information contained in the original application.

Section 14. MANAGEMENT CONTRACTS.

14.01 Commission Approval Required

14.01.1 Any management contract entered into by the Authority or by the Tribe for the management of Class II or Class III gaming must be submitted to the Commission for approval and a finding of suitability. Before approving such contract, the Commission shall require and obtain the following information:

(A) the name, address of each of the following:

(i) each person with management responsibility for a management contract;

(ii) each person who is the director of a corporation that is a party to a management contract;

(iii) each member of the Board of Directors of a corporation that is a party to a management contract;

(iv) each stockholder of a corporation who holds either directly or indirectly 10% or more of its issued and outstanding stock;

(v) each person who has a direct or indirect financial interest in an entity that is a party to a management contract; and

(vi) each person who has a direct or indirect financial interest in a management contract.

(B) for each of the individuals identified in subsection (A), the management contractor shall provide to the Commission:

(i) full name, other names used, social security number(s), birth date, place of birth, citizenship and gender;

(ii) a current photograph, driver's license number, and which state(s) issued a driver's license;

(iii) business and employment positions held, business and residence addresses held currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) until the present;

(iv) the names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence for the past five (5) years;

(v) current residence and business addresses and telephone numbers;

(vi) a description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) a description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) 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;

(ix) for each gaming related offense and for each felony for which there is an ongoing prosecution or a conviction, or for which a plea of guilty or no contest was entered, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) a complete financial statement showing all sources of income for the previous three years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) the management contractor shall arrange with an appropriate federal, state or Tribal law enforcement authority to supply the Commission with a completed fingerprint form (form FD-258) which is supplied by the NIGC for each of the individuals identified in Section 14.01.

14.01.2 The management contractor shall supply any further or additional information as may be required by the IGRA, NIGC regulations or the Compact.

14.01.3 The management contractor and any other person listed in Section 14.01.1(A) shall be required to respond to such written or oral questions as the Commission may propound in accordance with its responsibilities under this section.

14.01.4 For purposes of this Ordinance, any reference to the management contract described in Section 14.01.1 shall be considered to include all collateral agreements to such contract that relate to the gaming operation.

14.02 **Requirements for Approval**. The Commission may approve any management contract entered into by the Tribe or by the Authority only if the Commission determines that such contract provides at a minimum:

14.02.1 That all gaming covered by the contract will be conducted in accordance with the IGRA, NIGC regulations, the Compact and this Ordinance.

14.02.2 For the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(A) include an adequate system of internal accounting controls;

(B) include the preparation of financial statements in accordance with generally accepted accounting principles.

14.02.3 For immediate access to the gaming operation, including its books and records, by appropriate Tribal officials who shall have a right to verify the daily gross revenues and income made from any gaming activity.

14.02.4 For verifiable financial reports that are prepared by or for the Tribal Council on a monthly basis.

14.02.5 For a minimum guaranteed payment to the Tribe that has preference over the retirement of development and construction costs.

14.02.6 For an agreed ceiling for repayment of development and construction costs.

14.02.7 For a contract term not to exceed five years, except that, upon the request of the Tribe, a contract term of not more than seven years may be approved where the capital investment required and the income projections for the gaming activity require the additional time.

14.02.8 For grounds and mechanisms for terminating such contract.

14.02.9 For preference to Native Americans in the hiring of employees for the licensed gaming operation.

14.02.10 For a fee based upon a percentage of the net revenues of a licensed gaming operation that is reasonable in light of surrounding circumstances. Such fee shall not exceed thirty (30%) of the net revenues except that a management fee of not more than forty percent (40%) of net revenues may be approved when requested by the Tribe only if the capital investment required and income projections for such gaming activity require the additional fee.

14.03 **Contract Disapproval.** The Commission shall not approve any management contract if it determines that:

14.03.1 Any person listed in Section 14.01.1(A):

(A) is an elected member of the Tribal Council; or

(B) has been or subsequently is convicted of any felony or gaming offense; or

(C) has knowingly and willfully provided materially important false statements or information to the Commission or Tribal officials or has refused to respond to questions propounded under Section 14.01.3; or

(D) 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 thereto;

14.03.2 The management contractor has, or has attempted to, unduly interfere with or influence for its gain or advantage any decision or process of the Tribal Government relating to gaming activity; or

14.03.3 The management contractor has deliberately or substantially failed to comply with the terms of the management contract or the provisions of the IGRA, NIGC regulations, the Compact or this Ordinance.

14.04 **Modifying or Voiding Contract**.

14.04.1 The Commission, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any management contract if it subsequently determines that any of the provisions of this Ordinance have been violated.

14.04.2 If the Tribe elects to agree contractually to resolve disputes in a manner other than by revocation of a management contract, such contractual agreement shall supersede Section 14.04.1 so long as the agreement provides a reasonable avenue for the Tribe to insure a contractor's compliance with all other aspects of this Ordinance.

14.05 **Conveying Interest in Land**. No management contract shall transfer or in any manner convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.

14.06 **Fee for Costs of Investigation**. The Commission shall require a potential contractor to pay a fee to cover the cost of investigation necessary to reach a determination required by this Title.

14.07 **Approval by Tribal Council**. The Commission shall approve no management contract unless first reviewed and approved by the Tribal Council through resolution.

14.08 **Submission to NIGC.** After the Commission has given its approval of a management contract, the Commission shall submit such contract to the NIGC for its approval. Any such contract shall not take effect until the NIGC has approved it.

14.09 **Notice to State of Michigan**. If the Tribe enters into a management contract for the operation of any class III gaming or component thereof, the State of Michigan shall be given written notice of such contract.

Section 15. ENFORCEMENT.

15.01 **Jurisdiction**. Except as provided in this Ordinance and in any Compact, the Tribal Court shall have jurisdiction over all violations of this Ordinance.

15.02 **Prohibited Acts**. In addition to other civil and criminal offenses provided for in this Ordinance, the following acts are prohibited and subject any violator to the civil remedies or criminal penalties specified herein:

15.02.1 Participating in any Gaming not authorized by this Ordinance.

15.02.2 Knowingly making a false statement in an application for a license with the Director or with the Commission.

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

15.02.4 Attempting to bribe any person participating in any gaming.

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

15.02.6 Promoting or participating in any illegal gaming.

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

15.02.8 Falsifying any books or records that relate to any transaction connected with any gaming pursuant to this Ordinance.

15.02.9 Conducting or participating in any gaming which in any manner results in cheating or misrepresentation, and which allows any other disreputable tactics which detract from the fair nature and equal chance

of participation between gaming players, or which otherwise creates an advantage over and above the chance of such gaming activity which affects its outcome.

15.02.10 To conduct gaming with or to allow participation in gaming by or with an intoxicated or disorderly player.

15.02.11 To allow or participate in the sale of liquor at gaming facilities when such sale is prohibited by Tribal law.

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

15.02.13 To use bogus or counterfeit chips or charitable gaming tickets, or to substitute or use any cards, charitable gaming tickets or gaming equipment that has been marked or tampered with.

15.02.14 To employ or possess any cheating device or to facilitate cheating in any gaming.

15.02.15 To willfully use any fraudulent scheme or technique to change the odds of any game of chance.

15.02.16 To solicit, directly or indirectly, or use inside information on the nature or status of any gaming for the benefit of an individual.

15.02.17 To tamper with a gaming device or attempt to conspire to manipulate the outcome or the payoff of a gaming device, or otherwise unlawfully tamper with or interfere with the proper functioning of the machine.

15.02.18 To alter or counterfeit a gaming license.

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

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

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

15.02.22 To assist or allow a person who is under age to participate in a game of chance.

15.02.23 To possess any illegal narcotics or controlled substances in any licensed gaming facility.

15.02.24 To steal or attempt to steal funds or other items of value from any gaming operation or from the Commission.

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

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

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

15.02.28 No gaming operation shall employ any person who has been convicted of or entered a plea of nolo contendere to a criminal offense committed in Michigan or any other jurisdiction, involving theft, fraud, or misrepresentation, which would be a felony if committed in Michigan, and which was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from the person's criminal record by executive pardon, state court order, or operation of law; or to a gaming crime.

15.03 **Criminal Violation**. Any Person who violates or fails to comply with any provision of this Ordinance, or who fails or neglects to comply with any order or decision of the Commission, shall be guilty of a crime and may be required to pay a fine not to exceed $5,000 or be incarcerated for a period not to exceed 1 year. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance. Criminal violations of this Ordinance may only be determined by the MBPI Tribal Court.

15.04 **Civil Violation**. Any non-Indian who violates or fails to comply with any provision of this Ordinance, or who fails or neglects to comply with any order of the Director or the Commission, shall be liable for a civil fine not to exceed $5,000 for each violation thereof. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance. The amount of any such civil fine may be recovered in a civil action in the Tribal Court. Civil violations of this Ordinance may only be determined by the MBPI Tribal Court.

15.05 **Cumulative Fines**. All civil fines accruing under this Ordinance shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any operator, or any other person.

15.06 **Purpose of Civil Fines**. The civil fines imposed under this Ordinance are

intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Reservation and to compensate the Tribe for costs incurred by the Tribe in enforcing this Ordinance. The civil fines under this Ordinance are also intended to coerce all people into complying with this Ordinance and Commission regulations. The civil fines are not to punish such people for violation of such laws and regulations.

15.07 **Civil Action for Fines**. In enforcing the civil infraction provisions of this Ordinance, the Commission shall proceed, In the name of the Tribe, against a person for violation of such provision by civil complaint pursuant to the provisions of this Ordinance. The Commission in such action shall have the burden of showing, by the preponderance of the evidence, that such person violated the applicable provision of this Ordinance.

Section 16. INTERPRETATION.

16.01 The provisions of this Ordinance, being necessary for Tribe and its members, shall be liberally construed purposes and objectives thereof.

Section 17. DESIGNATED AGENT FOR SERVICE OF PROCESS. The designated agent for service of process is as follows:

MBPI Tribal Chairperson
1743 142nd Avenue, Suite 7
Dorr, MI 49323
616-681-8830-Phone
616-681-8836-Fax

With copies to:

MBPI General Counsel
1123 129th Avenue
Wayland, MI 49348
269-792-7742 Phone
269-792-7744 Fax

MBPI Tribal Gaming Commission Chairperson
1123 129th Avenue
Wayland, MI 49348
269-792-1750 Phone
269-792-4119 Fax