United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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NATIONAL INDIAN GAMING COMMISSION
2001 FEB -9 AM 11:30

DEC 28 2000

Honorable Leon D. Jones
Principal Chief
Eastern Band of Cherokee Indians
Qualla Boundary
P.O. Box 455
Cherokee, North Carolina 28719

Dear Chief Jones:

On December 5, 2000, we received the Second Amendment between the Eastern Band of Cherokee Indians (Tribe) and the State of North Carolina (State), dated November 14, 2000. We have completed our review of this Amendment and conclude that it does not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust responsibility. Therefore, pursuant to delegated authority and Section 11 of IGRA, we approve the Amendment. The Amendment shall take effect when the notice of our approval, pursuant to Section 11 (d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), is published in the FEDERAL REGISTER.

We wish the Tribe and the State success in their economic venture.

Sincerely,

/s/ Kevin Gover

Assistant Secretary - Indian Affairs

Enclosure

Similar Letter Sent to: Honorable James B. Hunt, Jr.
Governor of North Carolina
Raleigh, North Carolina 27603-8001

cc: Eastern Regional Director w/copy of approved Amendment
Supt., Cherokee Agency w/copy of approved Amendment
[redacted]
United States Attorney w/copy of approved Amendment

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Second Amendment between the Eastern Band of Cherokee Indians and the State of North Carolina, which was executed on November 14, 2000.

DATES: This action is effective January 17, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 28, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–1260 Filed 1–16–01; 8:45 am]

BILLING CODE 4310–02–P

SECOND AMENDMENT TO TRIBAL - STATE COMPACT BETWEEN THE EASTERN BAND OF CHEROKEE INDIANS AND THE STATE OF NORTH CAROLINA

This Amendment made and entered into this the 14thday of November, 2000 to that Tribal - State Compact executed by the parties in August 1994 which was approved by the Secretary of the Interior on September 22, 1994 and first amended on May 28, 1996, by and between the Eastern Band of Cherokee Indians, a federally recognized Indian tribe (hereafter "Tribe"), acting through its Principal Chief, the Honorable Leon D. Jones, and the State of North Carolina (hereafter "State"), acting through its Governor, the Honorable James B. Hunt Jr.;

WITNESSETH:

WHEREAS, the Eastern Band of Cherokee Indians and the State of North Carolina entered into a Compact to regulate Class III gaming conducted by the Tribe within the State as provided by the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. 2701 et seq., which was approved by the Secretary of Interior September 22, 1994, and the approval published in the Federal Register on October 3, 1994; and,

WHEREAS, as a result of the experience from the Eastern Band of Cherokee Indians operation of lawful Class III gaming activities since the approval of the Compact, both the Tribe and the State have recognized a need to make certain amendments to the original Compact in order to clarify certain sections and conditions in the Compact and carry out more clearly the intent of the Tribe and the State in the operation and oversight of these tribal gaming activities; and,

WHEREAS, the Tribe and the State have mutually agreed that the following amendments to the Compact will benefit the Eastern Band of Cherokee Indians and the State of North Carolina consistent with the objectives of the Indian Gaming Regulatory Act.

NOW, THEREFORE, THE EASTERN BAND OF CHEROKEE INDIANS and the STATE OF NORTH CAROLINA do enter into these Amendments to the Tribal - State Compact as provided herein.

The Compact and amendment to the Compact previously entered between the Tribe and State shall be and is hereby amended by mutual consent and agreement of the parties in the following respects. Except as hereby amended, all other terms and conditions of the Compact, as previously amended, shall remain in full force and effect.

First Amendment:

1) Section 3.(B) shall be amended as follows:
The sentence shall be rewritten to read as follows:

> "Class II gaming" means all forms of gaming as defined in 25 U.S.C. 2703(7) and as interpreted by the National Indian Gaming Commission (NIGC).

2) Section 3.(E) shall be amended as follows:
The sentence shall be rewritten to read as follows:

> "Raffles" means a game in which a cash or merchandise prize with a value of not more than $50,000 is won by the random selection of the name or number of one or more persons who have entries in the game.

3) Section 3.(H) shall be amended as follows:
The sentence shall be rewritten to read as follows:

> "Video Game" means any electronic video game or amusement device that allows a player to play a game of amusement involving the use of skill or dexterity as allowed under NCGS 14-306(b) and 14-306.1 or as subsequently amended by the North Carolina General Assembly.

Second Amendment:

4) Section 5.(A)(1) shall be amended as follows:
Part (1) shall be rewritten to read as follows:

> (1) The Tribe may not hire, employ or enter into a contract for services relating to Class III gaming with any person or any entity which employs a person in connection with Class III gaming who:

Subpart (1)(a) shall be rewritten to read as follows:

> (a) is under the age of 21.

A new Subpart (1)(c) shall be added to read as follows:

> (c) is currently charged with any offense set forth at (b) above which has not yet reached final disposition.

A new Subpart (1)(d) shall be added to read as follows:

(d) However, nothing herein shall prohibit the continued employment of persons under the age of 21 who met the age requirements under this Compact at the time of their employment. Those employees grandfathered by this section who become unemployed prior to reaching the age of 21 shall not be eligible for reemployment until they reach the age of 21.

5) Section 5.(A)(5) shall be rewritten to read as follows:

(5) No person under the age of 21 shall be permitted in the gaming area of the gaming facility where any component of Class III gaming is conducted except employees authorized under Section 5(A)(1)(d) of this compact; provided that this subsection shall not apply to locations at which sales of tickets is the only component of Class III gaming.

6) Subsections 5.(A)(4), (5) & (6) shall each be amended by striking the words "age of 18" and inserting in place thereof the words "age of 21"

7) Section 5.(A)(9) shall be amended as follows:
By adding a sentence to the end of the paragraph to read as follows:

However, nothing herein shall prohibit the use of cash machines operated by a federal or state regulated and licensed bank or lending institution or cash advance systems when the cash advance is from a preexisting credit line established on a credit card issued from a federal or state regulated and licensed bank.

8) Section 5.(A)(11) shall be amended as follows:
By rewriting the first sentence in the paragraph to read as follows:

The Tribe, prior to placing a prospective employee whose responsibilities include the operation or management of Class III games or child care services, shall conduct a background investigation in accordance with the Tribe's gaming ordinance and in compliance with the Act and pertinent regulations promulgated by the National Indian Gaming Commission (NIGC) consistent with the Memorandum of Understanding between the NIGC and the Eastern Band executed by the Tribe on January 31, 1994.

9) Section 5.(C) shall be amended as follows:
By striking the period in the last sentence of the paragraph with a comma and adding the following language:

> or leasing agreements with the owners of intellectual property on specific game types.

10) Section 5.(D) shall be amended as follows:
The first paragraph shall be rewritten to read as follows:

> One Class III gaming facility shall be permitted to be operated on the Eastern Cherokee Lands. The Tribe shall determine the location of the gaming facility on the Eastern Cherokee lands. The tribal gaming facility shall meet all North Carolina standards for construction, fire and safety.

The third paragraph shall be stricken in its entirety.

11) Section 5.(E) shall be amended as follows:
By adding a second sentence to read as follows:

> However, nothing herein prohibits the use of credit card cash advance systems as provided for in Section 5.(A)(9) of this Compact.

Third Amendment:

12) Section 6.(A) shall be amended as follows:
The first sentence shall be rewritten to read as follows:

> The Tribe shall purchase video game equipment only from a distributor or manufacturer. All such equipment must be certified by an independent testing laboratory.

13) Section 6.(C) shall be amended as follows:
The paragraph shall be rewritten to read as follows:

> Testing and Approval of Video Games. No video game may be purchased, leased or otherwise acquired by the Tribe unless the video game, or a prototype thereof, has been tested and approved or certified by the Certification Commission and a gaming test laboratory as meeting the requirements and standards of this Compact as allowed under NCGS 14-306(b) and 14-306.1 or as subsequently amended by the North Carolina

General Assembly. For purposes of this Compact, a gaming test laboratory is a laboratory agreed to and designated in writing by the State and the Tribe as competent and qualified to conduct scientific tests and evaluations of video games and related equipment.

14) Section 6.(I) shall be amended as follows:
The paragraph shall be rewritten to read as follows:

Prizes may be awarded in the form of free games, credits, cash or merchandise. Seventy-five percent (75%) of the video gaming devices may not exceed the value of $50,000 prize for each individual award. The remaining 25% of the video gaming devices may award prizes without limit in dollar amount.

15) Section 6.(J) shall be amended as follows:
By striking the fourth sentence in the paragraph.

16) Section 6.(L)(10) shall be amended as follows:
The period shall be replaced by a comma and the following language added:

unless the hardware switches are located within the secure electronic components (logic compartment) as defined in Section 6.(L)(8) of this compact and the Cherokee Tribal Gaming Commission has sole custody of the key.

17) Section 6.(M)(1) shall be amended as follows:
The paragraph shall be rewritten to read as follows:

Each video game must meet the following minimum theoretical percentage pay out during the expected lifetime of the game. Each video game machine shall pay out a minimum of 83 percent or a maximum of 100 percent of the total amount wagered over the expected life of the machine, including replays. This standard is met when using a method of play which will provide the greatest return to the player.

18) Section 6.(M)(4) shall be amended as follows:
The subpart (a) shall be stricken and the subsequent subparts (b),(c), & (d) reordered as (a),(b) & (c) respectively.

19) Section 6.(O) shall be amended as follows:
The paragraph shall be rewritten to read as follows:

> A video game authorized under this agreement shall be tested and approved by the Certification Commission as meeting the skill/dexterity requirement of 3.(H) of this Compact as allowed under NCGS 14-306(b) and 14-306.1 or as subsequently amended by the North Carolina General Assembly. The Commission shall consist of three members. The Governor shall appoint one member, the Principal Chief shall appoint one member, and the third member shall be approved by both the Governor and the Principal Chief. The appointments shall be made within thirty (30) days of the signing of this Compact.

Fourth Amendment:

20) Section 7.(A) shall be amended as follows:
The sentence shall be rewritten to read as follows:

> Raffles shall consist of a game in which a cash or merchandise prize is won by the random drawing of the name or number of one or more persons who have entries in the game.

21) Section 7.(B) shall be amended as follows:
The sentence shall be rewritten to read as follows:

> In no event shall the prize limit for a raffle game exceed the value of $50,000 in cash or merchandise.

Fifth Amendment:

22) Section 13. shall be amended as follows:
The entire section shall be stricken and rewritten as follows:

> This Compact shall remain in full force and effect for a period of thirty (30) years from the date this Second Amendment is approved by the Secretary of Interior and published in the Federal Register.

Sixth Amendment:

23) The Compact shall be amended by adding a new section to read as follows:

Section 17. HOTELS AND PLANNING ORDINANCES.

(A) The Tribe shall make at least seven thousand five hundred (7,500) referrals or complimentary room nights available on an annual basis to non-tribally owned hotels, so long as those hotels can accommodate Casino patrons. Reimbursement rates shall be set based on Tribal policy, which at the present time is the prevailing seasonal rate for motels and hotels of similar quality operating within a two hundred (200) mile radius of Cherokee.

(B) The Tribal Council shall institute, through its Planning Board, Sign Committee and other Council committees, in consultation with private and state resources, a comprehensive study which will result in drafting and enactment of ordinances and regulations designed to preserve the natural beauty of Cherokee trust lands, to protect, preserve and enhance the natural resources, environmental and aesthetic appearance of Cherokee tribal lands against long term degradation resulting from increased traffic and growth in connection with gaming activities, and to ensure continued quality development utilizing smart growth principles oriented toward the preservation and betterment of Cherokee trust lands. Such ordinances and regulations shall be enacted and in effect on or before two years from the effective date of this Amended & Restated Compact. Such ordinances and regulations may be amended as deemed necessary by the Tribe; provided, however, that the Tribe shall not alter any ordinance or regulation if such action will substantively and adversely impact the purposes of these ordinances and regulations as set out hereinabove.

Seventh Amendment:

24) The Compact shall be amended by adding a new section to read as follows:

Section 18. CREATION OF FOUNDATION.

(A) A non-profit foundation shall be established which shall be funded and endowed by the Tribe and shall operate under the name of CHEROKEE PRESERVATION FOUNDATION, whose purpose shall be to protect, preserve and enhance the natural resources, environmental and aesthetic appearance of Cherokee tribal lands against long term

degradation resulting from increased traffic and growth in connection with gaming activities, assist in economic development for public services, recreation, entertainment and community economic development and foster employment opportunities on or near Cherokee tribal lands, provide funding for the purpose of preservation, research, study, restoration and development of the history, tradition, culture, language, arts, crafts and heritage of the Cherokee people.

(B) The foundation shall be managed by a Board of ten Directors who shall be appointed by the Governor. The Governor shall appoint the Chair of the Board from among the ten members, and the Chair shall serve at the pleasure of the Governor. At least six of the ten Directors shall be enrolled members of the Eastern Band of Cherokee. The Governor shall appoint to the Board those individuals filling the following positions:

(1) Principal Chief of the Eastern Band of Cherokee Indians;
(2) Chair of the Tribal Council of the Eastern Band of Cherokee Indians;
(3) One county commissioner from one of the seven counties listed in paragraph (D) below;
(4) Two individuals who shall be enrolled members of the Eastern Band of Cherokee Indians selected from a list of six enrolled members nominated by the Principal Chief to the Governor for appointment;
(5) Two individuals chosen at large by the Governor from among the enrolled members of the Eastern Band of Cherokee Indians; and,
(6) Three individuals chosen at large by the Governor.

The Principal Chief and the Chair of the Tribal Council of the Eastern Band of Cherokee Indians shall serve ex officio. The other eight Directors shall serve staggered terms as follows:

(1) The county commissioner Director shall serve an initial term expiring the 31st day of December, 2002. Each successive term thereafter shall be four years and shall expire on each succeeding fourth anniversary of December 31, 2002. To be a Director, this appointee must continuously remain a county commissioner throughout the term. Should this appointee cease being a county commissioner at any time during his or her term as a Director, then by automatic operation of this provision he or she immediately shall cease to be a Director.

If this appointee leaves the position of Director for any reason, then the Governor shall appoint a qualified replacement who shall complete the term of the departed Director.

(2) The two Directors selected from a list of six enrolled members nominated by the Principal Chief to the Governor each shall serve an initial term expiring the 31st day of December, 2003. Each successive term thereafter shall be four years and shall expire on each succeeding fourth anniversary of December 31, 2003. If one of these appointees leaves office for any reason, then the Principal Chief of the Eastern Band of Cherokee Indians shall submit to the Governor a list of three names of enrolled members of the Tribe and the Governor shall appoint one of the three nominees to complete the term of the departed Director.

(3) The two Directors chosen at large by the Governor from among the enrolled members of the Eastern Band of Cherokee Indians each shall serve an initial term expiring the 31st day of December, 2004. Each successive term thereafter shall be four years and shall expire on each succeeding fourth anniversary of December 31, 2004. If one of these appointees leaves office for any reason, then the Governor shall appoint a replacement from among the enrolled members of the Eastern Band of Cherokee Indians to complete the term of the departed Director.

(4) The three individuals chosen at large by the Governor each shall serve an initial term expiring the 31st day of December, 2005. Each successive term thereafter shall be four years and shall expire on each succeeding fourth anniversary of December 31, 2005. If one of these appointees leaves office for any reason, then the Governor shall appoint a replacement at large to complete the term of the departed Director.

(C) The Tribe shall endow the foundation from additional funds realized by this Compact Amendment. The net gaming revenue realized by the Tribe during the fiscal year 2000 shall constitute the base net gaming revenue from which increased gaming revenue shall be calculated for purposes of funding the foundation. The Tribe shall fund the foundation in the amount of five million dollars per year for the first three years following final approval of the Amended and Restated Compact. After the first three years, the Tribe shall fund the foundation at five

million dollars per year or at a percentage equal to that percentage of net gaming revenue for the 2000 base year represented by five million dollars, whichever is greater, but in any event not more than ten million dollars. Nothing shall prohibit the Tribe from contributing additional principal to the foundation, nor shall the foundation be prohibited from seeking additional funds from other sources to support projects consistent with the purposes of the foundation. The Tribe shall continue to fund the foundation during the life of the Compact.

(D) The foundation shall authorize and fund projects based upon a priority system approved by the Board of Directors including but not limited to projects promoting family and outdoor entertainment and sporting activities, projects promoting non-gaming economic development and projects enhancing, protecting and preserving the culture of the Tribe. Such projects may supplement and enhance but not replace existing tribal government budgeted projects. Such projects shall be located on or near Cherokee tribal lands and in any of the following counties or any other county in which the Tribe may acquire tribal lands: Haywood, Jackson, Swain, Macon, Clay, Graham and Cherokee. The Tribe shall have the right to present and recommend projects to the Board for consideration and funding.

(E) A copy of the proposed Articles of Incorporation and By-Laws are attached to this Amended & Restated Compact as Attachment A and incorporated herein. Any inconsistencies between the Articles of Incorporation, the By-Laws, and this Amended & Restated Compact shall be resolved in favor of the provisions as set out in this Amended & Restated Compact.

IN WITNESS WHEREOF, the State of North Carolina and the Eastern Band of Cherokee Indians have hereto set their hands and seals.

Dated: November 14, 2000	Dated: November 14, 2000
STATE OF NORTH CAROLINA	EASTERN BAND OF CHEROKEE INDIANS
By: _____	By: _____
James B. Hunt Jr. Governor	Leon D. Jones Principal Chief

Attest:
By: Elaine F. Marshall
Elaine F. Marshall
Secretary of State

(The Great Seal of the
State of North Carolina)

Approved as to form and
Procedure for the State:

By: _____
Michael Easley
Attorney General

Approved as to form and
Procedure for the Tribe:

By: Ben Oshel Bridgers
Ben Oshel Bridgers
Attorney for Tribe

Approved this the 28 day of December, 2010.

By: Kevin Gover
Assistant Secretary of the
Interior - Indian Affairs