United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

Honorable Wendell Chino
President, Mescalero Apache Tribe
P.O. Box 176
Mescalero, New Mexico 88340

MAR 15 1995

Dear President Chino:

On February 14, 1995, we received the Compact between the Mescalero Apache Tribe (Tribe) and the State of New Mexico (State), dated February 13, 1995. We have completed our review of this Compact and conclude that it does not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust responsibility. Therefore, pursuant to my delegated authority and Section 11 of the IGRA, we approve the Compact. The Compact 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.

Submitted as part of the Compact is the Revenue Sharing Agreement which provides that the Tribe agrees to pay the State for the right to participate in a tribal monopoly on commercial gaming. We believe the money paid by the Tribe to the State constitutes an operating cost and as such would be paid from "gross revenues" and not "net revenues." While IGRA restricts Indian tribes' use of net revenues from tribal gaming,[1] it does not restrict Indian tribes' use of gross revenues from gaming if those revenues are used for operating costs.[2] Because IGRA does not prohibit or restrict use of gross revenues for operating expenses, we believe that the Revenue Sharing Agreement conforms with IGRA.

In the past, we have concluded that tribal payments to states for non-regulatory purposes violated IGRA. Our conclusion that the Tribe's payments to the State do not violate IGRA is distinguishable from these opinions. Unlike other payment agreements we have considered, in this case the federally recognized Indian tribes in New Mexico are purchasing a valuable right from the State.[3] As discussed above, the tribal payment for this right is an operating cost which does not violate IGRA.

Even if the money the Tribe plans to pay the State were considered net revenues from tribal gaming, the payment could be considered net revenues used to promote tribal economic

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[1] 25 U.S.C. § 2710(b)(2)(B) provides that net revenues from tribal gaming are not to be used for purposes other than (i) to fund tribal government operations or programs;(ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies.

[2] IGRA defines net revenues as "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees." 25 U.S.C. § 2703(9).

[3] The State has agreed that it will not allow commercial operation of any other gaming entity as long as the Tribes continue to make the agreed payments.

development, a use that is clearly sanctioned by IGRA, 25 U.S.C. § 2710(b)(2)(B)(iii), because, as discussed above, the Tribe is exchanging the revenues for an exclusive right to commercial operation of gaming within the State.

Notwithstanding our approval of the Compact, Section 11(d)(1) of the IGRA, 25 U.S.C. § 2710(d)(1), requires that tribal gaming ordinances be approved by the Chairman of the National Indian Gaming Commission (NIGC). Regulations governing approval of Class II and Class III gaming ordinances are found in 25 C.F.R. §§ 501.1-577.15 (1994). Pursuant to the IGRA and the regulations, even previously existing gaming ordinances must be submitted to the NIGC for approval when requested by the Chairman. The Tribe may want to contact the NIGC at (202) 632-7003 for further information to determine when and how to submit the ordinance for approval by the NIGC.

Some tribal constitutions have an independent requirement that certain types or tribal ordinances be submitted to the Secretary of the Interior for approval before being effective. Article 11 Section 1(d) of the Constitution of the Mescalero Apache Tribe would appear to require the Secretary to approve the gaming ordinance. Authority to approve such ordinances on behalf of the Secretary has been delegated to the Superintendent.

In addition, if the Tribe enters into a management contract for the operation and management of the Tribe's gaming facility, the contract must likewise be submitted to, and approved by the Chairman of the NIGC pursuant to Section 11(d)(9) of the IGRA, 25 U.S.C. § 2710(d)(9) and the NIGC's regulations governing management contracts. The Tribe may want to contact the NIGC for information on submitting the ordinance and the management contract for approval by the NIGC.

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

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosures

Identical Letter Sent to: Honorable Gary Johnson
Governor of New Mexico
State Capitol
Santa Fe, New Mexico 87501

cc: Albuquerque Area Director w/copy of approved Compact
Supt., Mescalero Agency w/copy of approved Compact
National Indian Gaming Commission w/copy of approved Compact
Southwest Regional Field Solicitor w/copy of approved Compact
New Mexico United States Attorney w/copy of approved Compact

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approval for Tribal-State compacts.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), 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 (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, approved Tribal-State Compacts between the following tribes and the State of New Mexico on February 13, 1995: The Mescalero Apache Tribe, Pueblo of Santa Ana, Pueblo of San Juan, Pueblo of Taos, Pojoaque Pueblo, Pueblo of Sandia, Pueblo of Tesuque, Pueblo of Santa Clara, Jicarilla Apache Tribe, Pueblo of Isleta, and the Pueblo of San Felipe.

DATES: This action is effective March 22, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: March 15, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6966 Filed 3–21–95; 8:45 am]

BILLING CODE 4310–02–P

THIS COMPACT is made and entered into this ___ day of February, 1995, by and between THE APACHE TRIBE OF THE MESCALERO RESERVATION (Mescalero Apache Tribe) (hereinafter referred to as "Tribe") and the STATE OF NEW MEXICO (hereinafter referred to as "State").

RECITALS

WHEREAS, the State is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe; and

WHEREAS, the Tribe is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State; and

WHEREAS, the Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721 (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose; and

WHEREAS, the Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility; and

WHEREAS, the State permits charitable organizations to conduct all forms of gaming wherein, for consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance, including but not limited to all forms of casino-style games, and others, pursuant to § 30-19-6, NMSA 1978 (1994 Repl. Pamp.); and

WHEREAS, the State also permits video pull-tabs and video bingo pursuant to §§ 60-2B-1 to -14, NMSA 1978 (1991 Repl. Pamp.), *Infinity Group, Inc. v. Manzagol*, No. 14,929 (N.M. Ct. App. Sept. 13, 1994); and

WHEREAS, the State permits pari-mutuel wagering pursuant to § 60-1-1 to -26, NMSA 1978 (1991 Repl. Pamp.) and §§ 60-2D-1 to -18, NMSA 1978 (1991 Repl. Pamp.); and

WHEREAS, such forms of Class III Gaming are, therefore, permitted in the State within the meaning of the IGRA, 25 U.S.C. §2710(d)(1)(B); and

WHEREAS, the Joint Powers Agreements Act, §§ 11-1-1 to -7, NMSA 1978 (1994 Repl. Pamp.), authorizes any two or more public agencies by agreement to jointly exercise any power common to the contracting parties (§ 11-1-3), and defined "public agency" to include Indian tribes and the State of New Mexico or any department or agency thereof (§ 11-1-2(A)); and

WHEREAS, the Mutual Aid Act, §§ 29-8-1 to -3, NMSA 1978 (1994 Repl. Pamp.), authorizes the State and any Indian tribe to enter into mutual aid agreements with respect to law enforcement; and

WHEREAS, Article V, § 4 of the Constitution of the State of New Mexico provides that "The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed;" and

WHEREAS, a Compact between the Tribe and the State for the conduct of Class III Gaming on Indian Lands will satisfy the State's obligation to comply with federal law and fulfill the IGRA requirement for the lawful operation of Class III Gaming on the Indian Lands in New Mexico; and

WHEREAS, the State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

NOW, THEREFORE, the State and the Tribe agree as follows:

TERMS AND CONDITIONS

SECTION 1. Purpose and Objectives.

The purpose and objectives of the State and the Tribe in making this Compact are as follows:

A. To evidence the good will and cooperative spirit between the State and the Tribe;

B. To continue the development of an effective government-to-government relationship between the State and the Tribe;

C. To provide for the regulation of Class III Gaming on Indian Lands as required by the IGRA;

D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;

F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and

G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands; and

SECTION 2. Definitions.

For purposes of this Compact, the following definitions pertain:

A. "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

B. "Indian Lands" means:

1. all lands within the exterior boundaries of the Tribe's reservation and its confirmed grants from prior sovereigns;

2. any other lands title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member thereof or is held by the Tribe or a member thereof subject to restrictions against alienation imposed by the United States, and over which the Tribe exercises jurisdiction and governmental authority.

C. "Tribal Gaming Agency" means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the

Tribe set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.

D. "State Gaming Representative" means that person designated by the Governor of the State, who will be responsible for actions of the State set out in the Compact. The representative will be the single contact with the Tribe and may be relied upon as such by the Tribe. If the State legislature enacts legislation to establish an agency of the State, such agency may assume the duties of the State Gaming Representative.

E. "Compact" means this compact between the State and the Tribe.

F. "Gaming Facility" means the buildings or structures in which Class III Gaming is conducted on Indian Lands.

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

H. "Management Contractor" means any person or entity that has entered into a Management Contract with the Tribe.

I. "Ordinance" means the gaming ordinance and any amendments thereto adopted by the Tribal Council of the Tribe.

J. "Tribe" means THE APACHE TRIBE OF THE MESCALERO RESERVATION (Mescalero Apache Tribe).

K. "State" means the State of New Mexico.

SECTION 3. Authorized Class III Gaming.

The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all Class III Gaming, that, as of the date this Compact is signed by the Governor of the State is permitted within the State for any purpose by any person, organization or entity, such as is set forth in the Recitals to this Compact (which Recitals are hereby incorporated herein by reference).

Subject to the foregoing, the Tribe shall establish, in its discretion, by tribal law, such limitations as it deems appropriate on the number and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

SECTION 4. Regulation of Class III Gaming.

A. **Tribal Gaming Agency**. The Tribal Gaming Agency will assure that the Tribe will:

1. operate all Class III Gaming pursuant to this Compact, tribal law, the IGRA, and other applicable Federal law;
2. provide for the physical safety of patrons in any Gaming Facility;
3. provide for the physical safety of personnel employed by the gaming enterprise;
4. provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;
5. provide for the protection of the property of the patrons and the gaming enterprise from illegal activity;
6. participate in licensing of primary management officials and key employees of a Class III Gaming enterprise;
7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and
8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. **Regulations**. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

1. prohibiting participation in any Class III game by any person under the age of eighteen (18);
2. prohibiting a key employee or primary management official to be employed who is under the age of eighteen (18) or who has not been licensed in accordance with Section 5, hereinafter;
3. governing any Management Contract regarding its Class III Gaming Activity such that they conform to the requirements of tribal law and the IGRA, 25 U.S.C. § 2711.

The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment (or approval, if any).

C. **Audit and Financial Statements.** The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least six (6) years from the date of creation. Not less than annually, the Tribal Gaming Agency shall require an audit and a certified financial statement covering all financial activities of the gaming enterprise by an independent certified public accountant licensed by the State. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall be submitted to the Tribal Gaming Agency within one hundred twenty (120) days of the close of the Tribe's fiscal year. The Tribe will maintain the following records for not less than six (6) years:

1. Revenues, expenses, assets, liabilities and equity for each Gaming Facility;
2. Daily cash transactions for each Class III Gaming at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game drop box, and gaming room bank;
3. All markers, IOU's, returned checks, hold check or other similar credit instruments;
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;
5. Contracts, correspondence, and other transaction documents relating to all vendors and contractors;
6. Records of all tribal gaming enforcement activities;

7. Audits prepared by or on behalf of the Tribe; and

8. Personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles, and background checks.

D. **Violations**. The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the gaming enterprise, Management Contractor, or any person, whether or not associated with Class III Gaming.

E. **State Gaming Representative.**

1. Upon written request by the State to the Tribe, the Tribe will provide information on primary management officials, key employees, and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5, hereinafter. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements, the State Gaming Representative authorized in writing by the Governor of the State or by legislation duly enacted by the State Legislature shall have the right to inspect all Gaming Facilities, Class III Gaming activity, and all records relating to Class III Gaming (including those set forth in

Section 5, hereinafter) of the Tribe, subject to the following conditions:

(a) With respect to public areas of a Gaming Facility, at any time without prior notice during normal business hours;

(b) With respect to private areas of a Gaming Facility not accessible to the public, at any time during normal business hours, with 24 hours prior written notice;

(c) With respect to inspection and copying of all management records relating to Class III Gaming, with 48 hours prior written notice, not including weekends. The reasonable costs of copying will be borne by the State; and

(d) Whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative or designee shall identify himself to security or supervisory personnel of the Gaming Facility.

3. The Tribe considers the information provided to the State pursuant to this Compact to be proprietary and commercial property of the Tribe. To the fullest extent allowed by State law, the State agrees to maintain in confidence and never to disclose to any third party any financial information, proprietary ideas, plans, methods, data, development inventions or other proprietary information regarding the gaming enterprise of the Tribe, Class III Gaming conducted by the Tribe, or the operation thereof, which is provided to the State by the Tribe without the prior written approval of a duly authorized representative of the Tribe. These prohibitions shall not be construed to prohibit:

(a) The furnishing of any information to a law enforcement or regulatory agency of the Federal Government;

(b) The State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;

(c) Publishing the terms of this Compact;

(d) Disclosing information as necessary to audit, investigate, prosecute, or arbitrate violations of this Compact or other applicable laws or to defend suits against the State;

(e) Complying with subpoenas or court orders issued by courts of competent jurisdiction.

4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.

5. The Tribe shall reimburse the State for the actual costs the State incurs in carrying out any functions authorized by the terms of this Compact, in an amount not to exceed twenty-five thousand dollars ($25,000.00) per annum. All calculations of amounts due shall be based upon a fiscal year beginning October 1, and ending September 30, unless the parties select a different fiscal year. Payments due the State shall be made no later than sixty (60) days after the beginning of each fiscal year. Payments due the State during any partial fiscal year this Compact is in effect shall be adjusted to reflect only that portion of the fiscal year. Within sixty (60) days after each fiscal year in which this Compact is in effect, the State shall submit to the Tribe an accounting of actual costs incurred in carrying out any functions authorized by the terms of this Compact. Any amount of said twenty-five thousand dollars ($25,000.00) not expended by the

State on said actual costs shall be returned to the Tribe by the State within sixty (60) days after the fiscal year or treated as a prepayment of the Tribe's obligation during the subsequent fiscal year.

6. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

F. The Tribe shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Internal Revenue Service.

SECTION 5. Licensing Requirements.

A. **License Required.** The Gaming Facility operator, (but not including the Tribe), including its principals, primary management officials, and key employees, the Management Contractor and its principals, primary management officials, and key employees (if the Tribe hires a Management Contractor), any person, corporation, or other entity that has supplied or proposes to supply any gaming device to the Tribe or the Management Contractor; and any person, corporation, or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the Tribal Gaming Agency before participating in any way in the operation or conduct of any Class III Gaming on Indian Lands.

B. **License Application**. Each applicant for a license shall file with the Tribal Gaming Agency a written application in the form prescribed by the Tribal Gaming Agency, along with the applicant's fingerprint card, current photograph, and the fee required by the Tribal Gaming Agency.

1. The following Notice ("Privacy Act Notice") shall be placed on the application form for a principal, key employee, or a primary management official before that form is filled out by an applicant:

> In compliance with the Privacy Act of 1974, the following information is provided: Solicitations of the information on this form is authorized by 25 U.S.C. §§ 2701-2721. The

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

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

2. Existing principals, key employees and primary management officials shall be notified, in writing, that they shall either:

   (a) Complete a new application form that contains a Privacy Act notice; or

   (b) Sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.

3. The following Notice ("False Statement Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

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

4. The Tribal Gaming Agency shall notify, in writing, existing principals, key employees and primary management officials that they shall either:

   (a) Complete a new application form that contains a False Statement Notice; or

   (b) Sign a statement that contains the False Statement Notice.

5. The Tribal Gaming Agency shall request from each applicant, and from each principal, primary management official, and key employee of each applicant, all of the following information:

   (a) Full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender, and all languages spoken or written;

   (b) Currently, and for the previous ten (10) years, business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers; provided, that any applicant who is a principal, primary management official, key employee, Management Contractor, manufacturer or supplier of gaming devices, and/or a person providing gaming services, must provide such information currently, and from the age of eighteen (18).

   (c) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed in Paragraph B.5.(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, and a description of any potential or actual conflict of interests between such businesses and Indian tribes;

(f) A description of any existing and previous business relationships in the gaming industry, including, but not limited to, ownership interests in those businesses;

(g) The name and address of any licensing or regulatory agency with which the applicant 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 date of the charge, the name and address of the court involved, and the disposition, if any;

(i) For each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

(j) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B.5.(h) or B.5.(i) of this Section, the criminal charge, the date of the charge, the name and address of the court involved, and the disposition, if any;

(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, as an applicant, principal,

primary management official, or key employee, and whether or not such license or permit was granted;

(l) A current photograph;

(m) Fingerprints, which shall be taken by officers of the tribal police department. Pursuant to a Memorandum of Understanding between the Tribe and the National Indian Gaming Commission ("Commission"), tribal police officers shall forward the fingerprint cards directly to the Commission.

(n) The fee required by the Tribal Gaming Agency; and

(o) Any other information the Tribal Gaming Agency deems relevant.

C. **Background Investigations.**

1. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

2. Background checks of applicants will be performed pursuant to the following procedures:

(a) The Tribal Gaming Agency will provide applications to potential applicants upon request, and shall collect and maintain the applications;

(b) Pursuant to a Memorandum of Understanding between the Tribe and the Commission, tribal police officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the Commission. The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency.

(c) The Tribal Gaming Agency shall investigate the information provided in the applications. This investigation will include:

(1) contacting persons or entities identified in the application, and verifying by written or oral communication that the information contained in the application is accurate;

(2) interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable eligibility requirements;

(3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and

(4) contacting any state, federal, or other government agency that is referred to in the application.

(d) The Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.

(e) The Tribal Gaming Agency will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Tribal Gaming Agency will perform additional investigations.

(f) Once the investigation is complete, the Tribal Gaming Agency will decide whether the applicant meets the eligibility criteria under the Ordinance.

3. In conducting a background investigation, the Tribal Gaming Agency and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.

4. Within twenty (20) days of the receipt of a completed application for licensing, and upon request of an applicant, the Tribal Gaming Agency 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 either:

(a) the issuance of the license;

(b) the issuance of a notice of denial; or

(c) ninety (90) days after the temporary licensee is issued, whichever occurs earlier.

5. The Tribal Gaming Agency shall review a person's prior activities, criminal record, if any, and reputation, habits, and associations to make a finding concerning the eligibility or suitability of an applicant, or a principal, key employee or primary management official of an applicant, for employment or involvement in a gaming enterprise. After such consultation, the Tribal Gaming Agency shall either issue a license or deny the application. If the Tribal Gaming Agency determines that employment or involvement of the applicant poses a threat to the public interest, or to the effective regulation of Class III Gaming or creates or enhances dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of Class III Gaming, the Tribal Gaming Agency shall deny the application.

6. The Tribal Gaming Agency shall retain the right to conduct additional background investigations of any person required to be licensed at any time while the license is valid.

D. **Procedure for Forwarding Applications and Reports.**

Procedures for forwarding applications and investigative reports to the Commission and State Gaming Representative.

1. When a key employee or primary management official begins work at a gaming enterprise authorized by this Compact, the Tribal Gaming Agency shall forward to the Commission and the State Gaming Representative a completed application for employment.

2. The Tribal Gaming Agency shall forward the report referred to in Paragraph D.4. of this section to the Commission and the State Gaming Representative within sixty (60) days after an employee begins work, or within sixty (60) days of the approval of this Compact by the Secretary of the Interior.

3. A key employee or primary management official who does not have a license shall not be employed after ninety (90) days.

4. The Tribal Gaming Agency shall prepare and forward to the Commission and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:

   (a) steps taken in conducting the background investigation;

   (b) results obtained;

   (c) conclusions reached; and

   (d) the basis for those conclusions.

5. The Tribal Gaming Agency shall submit with the Investigative Report a copy of the eligibility determination made under Paragraph C.5. of this section.

6. If a license is not issued to an applicant, the Tribal Gaming Agency shall notify the Commission and the State Gaming Representative.

7. With respect to principals, key employees and primary management officials, the Tribal Gaming Agency shall retain applications for employment and Investigative Reports (if any) for no less than three (3) years from the date of termination of employment.

E. **Granting a Gaming License.**

1. If within thirty (30) days after it receives an Investigative Report, neither the Commission nor the State Gaming Representative has notified the Tribal Gaming Agency that it has an objection to the issuance of a license pursuant to a license application filed by a principal, key employee or a primary management official, the Tribal Gaming Agency may issue a license to such applicant.

2. The Tribal Gaming Agency shall respond to any request for additional information from the Commission or the State Gaming Representative concerning a principal, key employee or primary management official who is the subject of an Investigative Report. Such a request shall suspend the thirty (30) day period under Paragraph E.1. of this Section until the Commission or the State Gaming Representative receives the additional information.

3. If, within the thirty (30) day period described above, the Commission or the State Gaming Representative provides the Tribal Gaming Agency with a statement itemizing objections to the issuance of a license to a principal, key employee or to primary management official for whom the Tribal Gaming Agency has provided an application and Investigative Report, the Tribal Gaming Agency shall reconsider the application, taking into account the objections itemized by the Commission and/or the State Gaming Representative, and make a final decision whether to issue a license to such applicant.

F. **Management Contract.**

1. If the Tribe chooses to enter into a Management Contract, the Tribal Gaming Agency shall require that all principals, primary management officials and key employees of the Management Contractor be licensed.

2. The Tribe may enter into a Management Contract only if the Management Contract:

   (a) Provides that all Class III Gaming covered by the Management Contract will be conducted in accordance with the IGRA, the Ordinance, and this Compact.

   (b) Enumerates the responsibilities of each of the parties for each identifiable function, including:

      (1) Maintaining and improving the Gaming Facility;

      (2) Providing operating capital;

      (3) Establishing operating days and hours;

      (4) Hiring, firing, training and promoting employees;

      (5) Maintaining the gaming enterprise's books and records;

      (6) Preparing the gaming enterprise's financial statements and reports;

      (7) Paying for the services of the independent auditor engaged pursuant to 25 C.F.R. § 571.12;

      (8) Hiring and supervising security personnel;

      (9) Providing fire protection services;

      (10) Setting advertising budget and placing advertising;

      (11) Paying bills and expenses;

      (12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) Complying with all applicable provisions of the Internal Revenue Code;

(15) Paying the cost of public safety services; and

(16) If applicable, supplying the Commission with all information necessary for the Commission to comply with the National Environmental Policy Act.

(c) Provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Permit the calculation and payment of the Management Contractor's fee; and

(5) Provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor, and any other user of shared Gaming Facilities and services.

(d) Requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports.

(e) Requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming enterprise; and

(2) Access to any other gaming-related information the Tribe deems appropriate.

(f) Provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) Provides an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) Provides for a term not to exceed the period allowed by the IGRA.

(i) Details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional fee.

(j) Provides the grounds and mechanisms for modifying or terminating the Management Contract.

(k) Contains a mechanism to resolve disputes between:

(1) The Management Contractor and customers, consistent with the procedures in the Ordinance;

(2) The Management Contractor and the Tribe; and

(3) The Management Contractor and the gaming enterprise employees.

(l) Indicates whether and to what extent contract assignments and subcontracting are permissible.

(m) Indicates whether and to what extent changes in the ownership interest in the Management Contract require advance approval by the Tribe.

(n) States that the Management Contract shall not be effective unless and until it is approved by the Chairman of the Commission, date of signature of the parties notwithstanding.

3. The Tribe shall not enter into any Management Contract if the Tribal Gaming Agency determines that the Management Contractor or any principal, primary management official or key employee of the Management Contractor is not licensed or is ineligible to be licensed.

SECTION 6. Providers of Class III Gaming Equipment or Supplies.

A. Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be purchased, leased or otherwise acquired by the Tribe after the effective date of this Compact for use in any Gaming Facility which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies acquired by the Tribe after the date of this Compact shall meet or exceed the standards thereby adopted, and any and all Class III Gaming equipment, devices, or supplies utilized by the Tribe in its Gaming Facilities as of the effective date of this Compact shall be upgraded or replaced, if necessary, so as to comply with such standards, by no later than one (1) year after the effective date of this Compact.

B. Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, the Tribe shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in

the lessor or the lease/purchase agreement to permit the Tribe to license those persons in accordance with Section 5, hereof.

C. The seller, lessor, manufacturer, or distributor shall provide, assemble and install all Class III Gaming equipment, devices and supplies in a manner approved and licensed by the Tribe.

SECTION 7. Dispute Resolution.

A. In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure:

1. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and shall specify the factual and legal basis for the alleged noncompliance. The notice shall specifically identify the date, time and nature of the alleged noncompliance. Representatives of the State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

2. In the event an allegation by the complaining party is not resolved to the satisfaction of such party within ninety (90) days after service of the notice set forth in Paragraph (A)(1) of this Section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within thirty (30) days of receipt of notice from the complaining party.

3. Arbitration under this authority shall be conducted under the Commercial Arbitration Rules of the American Arbitration

Association, except that the arbitrators shall be attorneys who are licensed members of the State Bar of New Mexico or of the bar of another state, in good standing. The State will select one arbitrator, the Tribe a second arbitrator, and the two so chosen shall select a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is selected, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association.

4. All parties shall bear their own costs of arbitration and attorney fees.

5. The results of arbitration shall be enforceable by an action for injunctive or mandatory injunctive relief against the State and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of any agent or employee of the State or the Tribe, contrary to a decision of the arbitrators in an arbitration proceeding conducted under the provisions of this Section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Tribe.

B. Nothing in Subsection 7(A) shall be construed to waive, limit or restrict any remedy which is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Compact shall be deemed a waiver of the Tribe's sovereign immunity. Nothing in this Compact shall be deemed a waiver of the State's sovereign immunity.

SECTION 8. Protection of Patrons.

A. **Liability to Patrons.** To insure the personal safety and protection of patrons and other invitees of the Tribe's Gaming Facilities operated under the provisions of this Compact, the Tribe shall at all times maintain in effect a policy of public liability insurance, insuring the Tribe, its agents and employees against any claims, demands or liability that may arise as a result of personal injury to any person (other than an employee of the gaming

establishment) occurring anywhere on the premises of any gaming establishment operated by the Tribe under the provisions of this Compact, or as a result of any act or omission of any agent or employee of such gaming establishment while in the course of his or her employment, which policy shall provide personal injury coverage of no less than One Million Dollars ($1,000,000) per injured person.

The Tribe agrees that in the event of any claim made against it or its gaming enterprise, or any agent or employee thereof, arising out of any personal injury as described above, neither the Tribe nor its insurer will assert any defense of immunity from suit as to such claim for compensatory damages up to the amount of One Million Dollars ($1,000,000) per injured person, in any action filed in a court of competent jurisdiction to be tried to the court; provided, however, that this agreement not to assert such defense shall be strictly limited as provided herein, and shall not apply to any claim for punitive damages, or to any claim for which a jury trial is demanded, or to any claim for any loss or damage other than that arising from actual bodily injury or death, or to any claim for damages in excess of the amount set forth herein. Nothing herein shall be construed as stating or implying that the Tribe has waived or agreed not to assert its immunity from suit for any other purpose or in any other circumstance other than the limited purposes and circumstances expressly set forth herein, nor shall anything herein be construed as an admission of liability as to any claim for damages or as an agreement or indication of willingness to pay any amount as damages absent a judicial determination of fault, and the Tribe or its insurer, or both, shall in every instance have the right to defend any such claim fully on the merits.

The Tribe shall provide to the State Gaming Representative annually a certificate of insurance showing that its gaming enterprise and its agents and employees engaged therein, are insured to the extent and in the circumstances required by this Section, or that it is self-insured to such extent and in such circumstances. If the State Gaming Representative so requests in writing, the certificate of insurance may be furnished directly to the State Gaming Representative from the insurance carrier or the insuring agency for the insured Tribe.

B. **Public Health and Safety.** The Tribe will establish for its Gaming Facilities health, safety, and construction standards that are at least as stringent as the current editions

of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code, and the Uniform Plumbing Code, and any and all gaming facilities or additions thereto constructed by the Tribe hereafter shall be constructed and all facilities shall be maintained so as to comply with such standards. Inspections will be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the representative may be present during such inspection. The Tribe agrees to correct any deficiencies noted in such inspections within a reasonable period of time. The Tribal Gaming Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.

SECTION 9. Effective Date.

This Compact shall be effective immediately upon the occurrence of the last of the following:

A. Execution by the Tribe's President after approval by the Tribal Council;

B. Execution by the Governor of the State;

C. Approval of the Secretary of Finance and Administration;

D. Approval by the Secretary of the Interior; and

E. Publication in the Federal Register.

SECTION 10. Criminal Jurisdiction.

The Tribe and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of state gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into under the IGRA to transfer such jurisdiction to the State. The Tribe and the State hereby agree that, in the event of any violation of any state gambling law within the Indian Lands by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts, provided, however, that this concurrent jurisdiction shall (1) not take effect unless and until the State, the Tribe, and the Office of the United States Attorney for the District of New Mexico shall have entered into a Memorandum of

Understanding ("MOU") with respect to the manner in which State, federal, and tribal law enforcement agencies shall cooperate in the detection of violations, apprehension and detention of any suspected violator, and the investigation and prosecution of any charges brought by the State pursuant to this Section and (2) continue so long as the MOU remains in effect.

SECTION 11. Binding Effect and Duration.

A. This Compact shall be binding upon the State and Tribe for a term of fifteen (15) years from the date it becomes effective and will automatically renew for additional five (5) year periods unless modified or terminated by written agreement of both parties.

B. At least one year prior to the expiration of the fifteen (15) year period after the Compact becomes effective, and thereafter at least one year prior to the expiration of each subsequent five (5) year period, either party may serve written notice on the other of its desire to renegotiate this Compact.

C. In the event that either party gives written notice to the other of its desire to renegotiate this Compact pursuant to Subsection (B) of this Section, the Tribe may, pursuant to the procedures of the IGRA, request the State to enter into negotiations for a new compact governing the conduct of Class III Gaming. If the parties are unable to conclude a successor compact, this Compact shall remain in full force and effect pending exhaustion of the administrative and judicial remedies set forth in IGRA and/or any other applicable federal law.

D. Notwithstanding the foregoing, at any time while this Compact remains in effect, either party may, by written notice to the other party, request reopening of negotiations with respect to any provision of this Compact, or with respect to any issue not addressed in the Compact, specifying such provision or issue in such notice. No such request shall be unreasonably refused, but neither party shall be required to agree to any change in the Compact, and no agreement to supplement or amend this Compact in any respect shall have any validity until the same shall have been approved in writing by the Tribe, the State and the Secretary of the Interior and notice of such approval published in the Federal Register.

E. The Tribe may operate Class III Gaming only while this Compact or any renegotiated compact is in effect.

SECTION 12. Severability.

In the event that any Section or provision of this Compact is held invalid by any court of competent jurisdiction, it is the intent of the parties that the remaining sections or provisions of this Compact, and any amendments thereto, shall continue in full force and effect. This Compact is not intended to bind the State to terms that require legislative action or a delegation of legislative power but is intended to provide a mechanism to the State to participate in the regulation of Class III Gaming as provided in this Compact and it is the intention of the parties that the provisions of this Compact be interpreted in accordance with these principles.

SECTION 13. Notice to Parties.

Unless otherwise indicated, all notices, payments, requests, reports, information or demand which any party hereto may desire or may be required to give to the other party hereto, shall be in writing, and shall be personally delivered or sent by first-class mail sent to the other party at its address appearing below or such other address as any party shall hereinafter inform the other party hereto by written notice given as aforesaid:

Notice to the Tribe shall be sent to:

Wendell Chino, President
Mescalero Apache Tribe
P.O. Box 176
Mescalero, NM 88340

Gregory M. Quinlan, Attorney at Law
Fettinger, Bloom & Quinlan, P.C.
P.O. Drawer M
Alamogordo, N.M. 88311-7521

Notice to the State shall be sent to:

Governor's Office
State of New Mexico
Santa Fe, New Mexico

Office of Attorney General
State of New Mexico
Santa Fe, New Mexico

Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt, or if mailed, upon receipt or the expiration of the third day following

the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

SECTION 14. Entire Agreement.

This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged, or terminated orally, but only by an instrument, in writing, signed by the Tribe and the State, and approved by the Secretary of the Interior.

SECTION 15. Filing of Compact with Secretary of State.

Upon the effective date of this Compact, a certified copy shall be filed by the tribal President with the New Mexico Secretary of State and a copy shall be transmitted to the New Mexico Attorney General. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Secretary of State and a copy shall be transmitted to the New Mexico Attorney General.

IN WITNESS WHEREOF, WENDELL CHINO, President of the APACHE TRIBE OF THE MESCALERO RESERVATION (Mescalero Apache Tribe) acting for the Tribe and GARY JOHNSON, Governor of the STATE OF NEW MEXICO, acting for the State have hereunto set their hands and seals.

MESCALERO APACHE TRIBE

BY: _____
WENDELL CHINO, President

Dated: February 13, 1995

STATE OF NEW MEXICO

BY: _____
Gary Johnson
Governor

Dated: 2/13/95

APPROVAL BY THE SECRETARY OF FINANCE AND ADMINISTRATION

The foregoing Compact between THE MESCALERO APACHE TRIBE and the STATE OF NEW MEXICO is hereby approved this 13 day of February, 1995, pursuant to authority conferred on me by the New Mexico Joint Powers Agreements Act, §§ 11-1-1 to -7, NMSA 1978 (1994 Repl. Pamp.).

BY: _____
SECRETARY OF FINANCE AND ADMINISTRATION

APPROVAL BY THE SECRETARY OF THE INTERIOR

The foregoing Compact between THE MESCALERO APACHE TRIBE and the STATE OF NEW MEXICO is hereby approved this 15th day of March, 1995, pursuant to authority conferred on me by Section 11 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710. I direct that it be promptly submitted to the Federal Register for publication.

BY: Ada E. Deer
ADA E. DEER
ASSISTANT SECRETARY - INDIAN AFFAIRS

TRIBAL-STATE
REVENUE SHARING AGREEMENT

This Agreement made between the State of New Mexico (hereinafter referred to as "State") and The Apache Tribe of the Mescalero Reservation (Mescalero Apache Tribe) (hereinafter referred to as "Tribe"), parties to a Compact between the Tribe and the State, executed more or less contemporaneously with this Agreement.

WITNESSETH

WHEREAS, Article V, § 4 of the Constitution of the State provides that "The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed"; and

WHEREAS, the Joint Powers Agreements Act, §§ 11-1-1 to -7, NMSA 1978 (1994 Repl. Pamp.), authorizes any two or more public agencies by agreement to jointly exercise any power common to the contracting parties (§ 11-1-3), and defines "public agency" to include both Indian tribes and pueblos and the State of New Mexico or any department or agency thereof (§ 11-1-2(A)); and

WHEREAS, the Mutual Aid Act, §§ 29-8-1 to -3, NMSA 1978 (1994 Repl. Pamp.), authorizes the State and any Indian tribe or pueblo to enter into mutual aid agreements.

NOW, THEREFORE, the parties agree as follows:

1. Summary. The Tribe agrees to contribute certain of its Class III Gaming revenues, as described below, to the State and Local Government(s), as defined below, on the terms and conditions contained in this Agreement.

2. Purpose. The purpose of this Agreement is to compensate the State and Local Government(s) for maintaining market exclusivity of tribal gaming. Tribal revenue sharing will, therefore, be limited to the extent that competing games are conducted outside Indian Lands. This Agreement is intended to recognize the existing lawful levels of gaming permitted under State law and public policy. A central purpose of this Agreement is that if such existing lawful levels of gaming are increased, except as referred to under Paragraph 5(B), below, the Tribe's revenue sharing obligation hereunder shall terminate.

3. Revenue to State and Local Governments. The parties agree that, after the effective date hereof, the Tribe shall make semi-annual payments to the General Fund of the State ("State General Fund") and to any one or more Local Governments. "Local Government" shall mean any political subdivision of the State or any other local governmental entity or part thereof exercising authority on or near such Tribe's Indian Lands (but shall not mean another Indian Tribe or pueblo).

The Tribe's governing body or its designee shall determine which Local Government(s) shall receive payments and the amounts thereof; provided, however, the Tribe, or its designee, may make this determination based in part upon compensating the Local Governments for governmental services provided to the Tribe. However, no monies that the Tribe is already required or contracted to pay to the State or its subdivision(s) under any other agreement may be included in the forty percent (40%) share to Local Governments.

The State General Fund shall receive sixty percent (60%) of the amount calculated pursuant to Paragraph 4, below, and the Local Government(s) shall receive an aggregate amount equal to forty percent (40%) of that amount.

4. Calculation of Revenue to State and Local Governments.

A. The parties agree that, as used herein, "net win" is defined as the total amount wagered at each Gaming Facility on Class III games of chance which are protected by the limitations in Paragraph 5, below, and elsewhere herein, minus the total amount paid as prizes (including non-cash prizes) and winning wagers at said games, and minus all tribal regulatory fees and expenses, supported by reasonable, adequate documentation, not to exceed $250,000 per year and minus federal and State regulatory fees and expenses, and taxes.

B. The total revenue the Tribe will pay to the State and Local Government(s) in the aggregate pursuant to Paragraph 3, above, shall be determined as follows:

(1) Three Percent (3%) of the first Four Million Dollars ($4,000,000) of net win at each Gaming Facility derived from Class III games of chance which are protected by the limitations in Paragraph 5, below, and elsewhere herein; and

(2) Five Percent (5%) of the net win over the first Four Million Dollars ($4,000,000) at each Gaming Facility derived from Class III games of chance which are protected by the limitations in Paragraph 5, below, and elsewhere herein.

C. For purposes of these payments, all calculations of amounts due shall be based upon a calendar year beginning January 1 and ending December 31,

unless the parties agree on a different fiscal year. The semi-annual payments due to the State and Local Government(s) pursuant to these terms shall be paid no later than twenty five (25) days after December 31 and June 30 of each year (or commensurate dates if the fiscal year agreed upon is different from the calendar year). Any payments due and owing from the Tribe in the year the Compact is approved, or the final year the Compact is in force, shall reflect the net win, but only for the portion of the year the Compact is in effect.

5. Limitations. The Tribe's obligation to make the payments provided for in Paragraphs 3 and 4, above, shall apply and continue only so long as there is a binding Class III Compact in effect between the Tribe and the State which Compact provides for the play of Class III games of chance, but shall terminate in the event of any of the following conditions:

A. If the State passes, amends, or repeals any law, or takes any other action, which would directly or indirectly attempt to restrict, or has the effect of restricting, the scope of Indian gaming.

B. If the State permits any expansion of non-tribal Class III Gaming in the State. Notwithstanding this general prohibition against permitted expansion of gaming activities, the State may permit (1) the enactment of a State lottery, (2) any fraternal, veterans or other non-profit membership organization that, as of the date on which this Agreement is signed by the Governor of the State, was operating one or more electronic gaming devices on such organization's premises for the benefit of its members, whether lawfully or not, to operate such devices lawfully, but only for the

benefit of such organization's members, and only if such devices are required to meet the standards applicable to such devices in the State of Nevada by no later than one year after the date of enactment of legislation making such devices lawful, and only if such organization is permitted to operate no more than the number of such devices in place and operating on such organization's premises as of 5:00 p.m., February 10, 1995, based on a certified state inventory that is subject to audit and review by the Tribe; and (3) any horseracing tracks to operate electronic gaming devices on days on which live horseracing or simulcast of horse races occurring at horseracing tracks elsewhere within New Mexico are conducted at such tracks, provided, however, that for any day on which electronic gaming devices are permitted to be operated under this provision at any horseracing track located within 150 miles of a Gaming Facility owned by the Tribe, one-half of the net win derived from electronic gaming devices at such Gaming Facility for such day would be exempt from any revenue sharing obligation under the provisions of this Agreement (except that if electronic gaming devices are operated at such horseracing track for more than 12 hours on any such day, all of the Tribe's revenues from electronic gaming devices on such day shall be exempt from any revenue sharing obligation under the provisions of this Agreement); and provided further that there will be no exemption from State taxes imposed on gross receipts of such electronic gaming devices at horseracing tracks. Notwithstanding the reference to permitted live horseracing dates, any increase in the number of permitted live horseracing dates on which electronic gaming devices are permitted to be operated shall constitute an unpermitted expansion of gaming.

6. Effect of Variance.

A. In the event the acts or omissions of the State cause the Tribe's obligation to make payments under Paragraph 4 of this Agreement to terminate under the provisions of Paragraph 5, such cessation of obligation to pay will not adversely affect the validity of the Compact, but the maximum amount that the Tribe agrees to reimburse the State for actual documented regulatory costs under Section 4(E)(5) of the Compact shall automatically increase to One Hundred Thousand Dollars ($100,000) per year.

B. In the event a Tribe's revenue sharing payment to the State is less than $100,000 per year, the maximum amount that the Tribe agrees to reimburse the State for actual documented regulatory costs under Section (4)(E)(5) of the Compact shall automatically increase to $100,000 per year less the amount of the revenue sharing payment.

7. Interpretation. This Agreement shall be broadly construed to accomplish its purpose.

8. Dispute Resolution. In the event either party fails to comply with or otherwise breaches any provision of this Agreement, the aggrieved party may invoke the dispute resolution procedure set out in the Compact.

9. Effective Date. This Agreement shall become effective on the date that the Compact between the State and the Tribe becomes effective.

10. Amendments. Any amendment to this Agreement shall be in writing and signed by both parties. The terms and conditions of this Agreement shall remain in effect until amended, modified or terminated, by agreement of the parties.

11. Third Party Beneficiaries. This Agreement is not intended to create any third-party beneficiaries and is entered into solely for the benefit of the Tribe and the State.

12. Definitions. Unless otherwise provided herein, terms in this Agreement shall have the same meanings as such terms are given in Section 2 of the Compact.

13. Equal Treatment. If during the term of this Agreement, any tribe or pueblo in the State of New Mexico enters into a comparable agreement pertaining to sharing of Class III Gaming revenues with the State, containing any terms or conditions more favorable to that tribe or pueblo than those contained in this Agreement, without the written consent of the Tribe, then the Tribe shall be entitled to operate under the more favorable terms without amending this Agreement or the Compact.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ___ day of February, 1995.

MESCALERO APACHE TRIBE

By: _____
Wendell Chino
President

Dated: February 13, 1995

STATE OF NEW MEXICO

By: _____
Gary Johnson
Governor

Dated: 2/13/95

APPROVAL BY THE SECRETARY OF FINANCE AND ADMINISTRATION

The foregoing Agreement between THE APACHE TRIBE OF THE MESCALERO RESERVATION (MESCALERO APACHE TRIBE) and the STATE OF NEW MEXICO is hereby approved this 13 day of February, 1995, pursuant to authority conferred on me by the New Mexico Joint Powers Agreements Act, §§ 11-1-1 to -7, NMSA 1978 (1994 Repl. Pamp.).

BY: _____
Secretary of Finance
and Administration

ENTERED