United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

OCT 29 1998

Honorable Anthony Pico
Chairman
Viejas Band of Kumeyaay Indians
P.O. Box 908
Alpine, California 91903

Dear Chairman Pico:

On September 16, 1998, we received the Tribal-State Compact between the State of California (State) and the Viejas Band of Kumeyaay Indians (Tribe), dated August 24, 1998. 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 delegated authority and Section 11 of 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.

Notwithstanding our approval of the Compact, Section 11 (d)(1) of 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 (1997). Pursuant to 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.

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 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.

Finally, although we believe that the Counsel to the Governor may be correct in asserting, in his October 5, 1998, letter to the Acting Director of the Indian Gaming Management Staff, that a change in the Tribe's allocation of lottery devices set out in an addendum to the Compact may not require Secretarial approval under Section 11(d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), to become effective, we recommend that such approval be sought to eliminate any uncertainty regarding this issue.

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

Sincerely,

/s/ Kevin Gover

Assistant Secretary - Indian Affairs

Enclosure

Identical Letter Sent to: Honorable Pete Wilson
Governor of California
Sacramento, California 95814

cc: Sacramento Area Director w/copy of approved Compact
Supt., Southern California Agency w/copy of approved Compact
National Indian Gaming Commission w/copy of approved Compact
Pacific SW Regional Field Solicitor w/copy of approved Compact
California United States Attorney w/copy of approved Compact

TRIBAL-STATE COMPACT

BETWEEN

THE STATE OF CALIFORNIA

AND THE

VIEJAS BAND OF KUMEYAAY INDIANS

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PREAMBLE

WHEREAS, the Indian Gaming Regulatory Act (hereinafter "IGRA") provides that a federally-recognized Indian tribe may engage in Class III gaming activities on its lands pursuant to a compact negotiated between the State and the tribe; and

WHEREAS, in the spirit of good faith and in recognition of each party's sovereign rights, the Viejas Band of Kumeyaay Indians (hereinafter the "Viejas Band" or the "Tribe") and the State of California (hereinafter the "State") have entered into this Compact in compliance with their rights and obligations under IGRA; and

WHEREAS, in accordance with IGRA's purposes, this Compact seeks to achieve the goals and objectives of the Tribe and the State, including the promotion of tribal economic development and strong tribal government, and the protection of the California public; and

WHEREAS, the State and the Tribe recognize that any successful negotiation must involve compromise so that each party achieves its most important goals while accommodating the most important goals of the other; and

WHEREAS, for the Tribe, this Compact —

- Secures the right to operate legally permissible Class III gaming activities heretofore authorized only to the State Lottery, including games not currently offered by the State Lottery;
- Generates revenues to the Tribe without reducing needed revenues by requiring it to share any portion thereof with the State;
- Promotes tribal economic stability through a Compact term of up to twenty years;
- Provides the Tribe with the primary responsibility for the on-site regulation of gaming personnel; and
- Permits the resolution of disputes through an impartial tribunal; and

WHEREAS, for the State, this Compact —

- Secures the legal rights of Californians who choose to enter the Tribe's gaming facility, whether as employees or patrons;
- Grants the State a significant regulatory role so as to ensure a safe, honest and crime-free gaming operation;
- Restrains the expansion of gambling in the State in light of the California constitutional prohibition against casinos of the type operating in Nevada and New Jersey; and
- Protects the environmental and other local interests of the communities surrounding the Tribe's gaming facility by granting the local jurisdiction a significant voice in these issues; and

WHEREAS, for both the Tribe and the State, this Compact —

- Fosters alternatives to gaming as a means to achieve tribal economic self-sufficiency; and
- Affords non-gaming tribes, many of which are located in remote areas, an opportunity to participate in gaming revenues so that all California tribes that wish to do so can promote their economic development and self-sufficiency; and

WHEREAS, the Tribe and the State believe that the principles underlying the specific agreements reached herein and the respectful and cooperative process in which the negotiations have been conducted offer hope of a new chapter for tribal-state relations;

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

ARTICLE 1. DEFINITIONS

The following definitions apply throughout this Compact. Defined terms are indicated by the use of initial capital letters.

1.1 Board. The California Gambling Control Board.

1.2 Certified Mail. Certified or registered mail, Federal Express, United Parcel Service, Express Mail or any similar mail delivery service generating a return receipt or a signature of the recipient, confirming delivery of that mail.

1.3 Class II Gaming. Class II gaming as that term is used in IGRA.

1.4 Class III Gaming. Class III gaming as that term is used in IGRA.

1.5 Commission. The California Gambling Control Commission.

1.6 Compact. This compact between the State of California and the Viejas Band of Kumeyaay Indians.

1.7 County Participation Agreement. The agreement entered into pursuant to Article 15 of this Compact.

1.8 Crime. A crime as defined by section 16 of the California Penal Code.

1.9 Criminal Laws. Laws prohibiting conduct defined as a crime by the laws of the State of California.

1.10 Department or Department of Justice. The California Department of Justice.

1.11 Director. The Director of the Division of Gambling Control of the California Department of Justice.

1.12 Distributor. Any Person who sells, leases, markets, offers, or otherwise distributes any electronic, mechanical, or electromechanical device, including, but not limited to, a Lottery Device or a Lottery Device System, which is used on the Reservation in connection with a Class III Gaming activity.

1.13 Division. The Division of Gambling Control in the California Department of Justice.

1.14 Economic Development Zone. Any zone which eliminates, suspends or

relaxes, in whole or in part, regulatory or tax requirements which apply elsewhere in the State, including, but not limited to, tax credits and relief from possessory interest taxes, payroll taxes, business license taxes, development fees, and construction related fees.

1.15 Facility. The location or locations on the Reservation where the Tribe has authorized Class III Gaming to be conducted, including the buildings, parking lots, and associated infrastructure. The boundaries and location of the Facility as of the execution of this Compact are specifically defined by and limited to the description, the boundaries shown on the aerial photograph, and the Facility Boundary and Easement Plat attached to this Compact as Exhibit B. A legal description of said boundaries, prepared by a mutually agreeable person, shall be added to Exhibit B as soon as practicable after the effective date of this Compact, but in the event of any material discrepancy between the legal description and the boundaries shown on the aerial photograph, the boundaries shown on the aerial photograph will control. If the Tribe changes the location(s) where it authorizes Class III Gaming, it shall amend Exhibit B to reflect those changes before commencing Class III Gaming in the new location(s).

1.16 Gambling Control Act. The California Gambling Control Act as enacted by California Statutes 1997, Chapter 867.

1.17 Gambling Enterprise Employee. A gambling enterprise employee within the meaning of the Gambling Control Act.

1.18 Hotel. Any structure which contains sleeping rooms which are offered to the public for rent or other payment, and the only significant purpose of which, other than to provide lodging, is to facilitate patronage of the Class III Gaming operations authorized by this Compact.

1.19 IGRA. The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

1.20 Immediate Family Member. The spouse, parent, or child of a member of the Tribal Gaming Agency, or a parent or child of the spouse of that

member.

1.21 Indian Lands. The Tribe's Indian lands as defined under IGRA.

1.22 Indian Lottery Game. A procedure authorized by the Tribe whereby prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares which provide the opportunity to win such prizes.

1.23 Interested Parties. Persons, groups, or agencies, other than Responsive Agencies, that (a) request in writing a notice of preparation of a draft environmental impact report under subsection 15.2.1; (b) are identified by the County Board of Supervisors as concerned with the environmental effect of a Project; or (c) have commented on the Project in writing to the Tribe or the County Board of Supervisors.

1.24 Key Employee. A key employee within the meaning of the Gambling Control Act and the regulations of the State Gambling Control Agency, where the employee is associated with Class III Gaming.

1.25 Lottery Device. An electronic, mechanical, or electromechanical device or mechanism by means of which a lottery is played by a single player, including any part or component of such a device or mechanism.

1.26 Lottery Device License. A license granted for valuable consideration by one tribe to another tribe, representing authorization to the grantee tribe to operate one or more Lottery Devices in the stead of the grantor tribe.

1.27 Lottery Device System. A combination of one or more Lottery Devices and any other computer, server, machine, monitor, or other device, which is used for the conduct of any lottery game authorized by this Compact, including for the determination, recordation, and display of draw outcomes, wins, and losses, or for the recordation, distribution, or reporting of revenue receipts, payouts, and transactions.

1.28 Manufacturer. Any Person who manufactures, assembles, produces, programs, or makes modifications to any electronic, mechanical, or electromechanical device, including, but not limited to, a Lottery Device or

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a Lottery Device System, which is used on the Reservation in connection with a Class III Gaming activity.

1.29 Mitigation. Mitigation within the meaning of the California Environmental Quality Act ("CEQA"), Chapter 1 (commencing with section 21000) through Chapter 6 (commencing with section 21165) of Division 13 of the California Public Resources Code.

1.30 Net Income. Net income within the meaning of Generally Accepted Accounting Principles ("GAAP").

1.31 Off-Reservation Gambling Establishment. A gambling establishment within the meaning of the Gambling Control Act that reports the same level of gross revenue from gambling as the Tribe's gross revenue from all Class II and Class III Gaming.

1.32 Person. A person within the meaning of the Gambling Control Act and the regulations of the State Gambling Control Agency.

1.33 Phase I. The period in the administration of the Gambling Control Act prior to issuance of the Executive Order described in California Statutes 1997, Chapter 867, section 66.5.

1.34 Phase II. The period in the administration of the Gambling Control Act following issuance of the Executive Order described in California Statutes 1997, Chapter 867, section 66.5.

1.35 Project. An activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is (a) authorized by the Compact, or (b) may be undertaken by the Tribe to directly facilitate activities authorized by the Compact. This definition shall be understood to include, but not be limited to, the construction or expansion of any Facility, any activity on or within a Facility, and any construction or expansion ancillary to a Facility, including, but not limited to, access roads, utility or waste disposal systems, or water supply, but it shall not include the construction of golf courses, shopping

centers, and other construction that does not directly facilitate activities authorized by the Compact. The parties agree that as of the effective date of this Compact, all activities, which (a) are authorized by the Compact, or (b) have been undertaken by the Tribe to directly facilitate activities authorized by the Compact, are occurring within the boundaries set forth in Exhibit B, but the parties recognize that this could change in the future.

1.36 Reservation. The Tribe's Indian Lands.

1.37 Responsive Agencies. All local, state and federal agencies, which, if a Project were not taking place on Indian Lands, would have responsibility for approving the Project or would exercise authority over natural resources that may be affected by the Project.

1.38 Service Employee. Food and beverage, housekeeping, cleaning, bell and door services, and laundry employees at the Facility or Hotel, if any.

1.39 Significant Effect on the Environment. A significant effect on the environment within the meaning of California Public Resources Code section 21083 and the regulations promulgated thereunder.

1.40 State. The State of California.

1.41 State Gambling Control Agency. In Phase I, the Division, as defined herein, but in Phase II, the Commission, as defined herein.

1.42 Suitability or Suitable. Satisfaction of the conditions stated in California Business and Professions Code section 19848 or section 19848A, and the absence of any disqualifying condition stated in California Business and Professions Code section 19850 or section 19850A.

1.43 Tribal Gaming Agency. The agency of the Tribe's government responsible for the regulation of tribal gaming and the licensing of persons associated therewith as provided in this Compact.

1.44 Tribe. The Viejas Band of Kumeyaay Indians, California.

1.45 Unsuitable. Not suitable within the meaning of subsection 1.42 of this Compact.

ARTICLE 2. TERM OF COMPACT

2.1 Effective Date. This Compact shall be effective upon publication of the notice of approval thereof by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. § 2710(d)(3)(B).

2.2 Termination Date. This Compact shall terminate on January 1, 2009, unless renewed or extended pursuant to Section 2.3 or terminated earlier pursuant to Section 2.4.

2.3 Renewals. The Tribe shall have the right to renew the Compact for two additional five-year periods pursuant to a written notice of renewal served on the Governor by the Tribe not more than one year before the termination date nor less than one hundred eighty (180) days before the termination date as long as none of the following has occurred prior to the effective date of the renewal:

2.3.1 The Tribe has been found by a court, an arbitral tribunal, or either or both of them to have:

A. Engaged in unauthorized Class III Gaming activities on two or more separate occasions; or

B. Violated any of the provisions of this Compact on five or more separate occasions.

2.3.2 At any time after January 1, 1998, slot machines as defined in California Penal Code sections 330a, 330b, or 330.1, or any other heretofore prohibited forms of Class III Gaming are authorized by legislation, initiative, or final judicial decision for use or operation in the State by any person, organization or entity, for any purpose. In such an event, the Governor shall commence negotiations in good faith with the Tribe to enter into a new compact pursuant to, and subject to, the provisions of Section 2.7.

2.3.3 At least one year before the termination date of the Compact, the Governor has served upon the Tribe a notice of intention not to

renew, setting forth the reasons for the decision with reasonable specificity. In such an event, the Governor shall commence negotiations in good faith with the Tribe to enter into a new compact pursuant to, and subject to, the provisions of Section 2.7.

Where the Tribe serves a notice of renewal, and one or more of the events described in subsection 2.3.1 or 2.3.2 have occurred, the Governor may, within ninety (90) days after service of the notice of renewal or the occurrence of the event, whichever is later, serve upon the Tribe a notice rejecting the notice of renewal. Notwithstanding the foregoing, where a notice rejecting the notice of renewal based on subsection 2.3.2 is served less than one hundred twenty (120) days before the termination date, the term of the Compact shall be extended for an additional twelve (12) months from the date of service of the notice of rejection in order to permit negotiation under Section 2.7 before the Compact expires.

2.4 Early Termination.

2.4.1 This Compact may be terminated by the Governor, at his or her discretion, at any time if any of the following occurs:

2.4.1.1 At any time on or after January 1, 1998, legislation or an initiative statute or constitutional amendment becomes effective which authorizes slot machines as defined in California Penal Code sections 330a, 330b, or 330.1 for use or operation in the State by any person, organization, or entity for any purpose.

2.4.1.2 The Tribe has been found to have:

A. Engaged in unauthorized Class III Gaming activity on two or more separate occasions by a court, an arbitral tribunal, or either or both of them; or

B. Violated any of the provisions of this Compact on five or more separate occasions by a court, an arbitral

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tribunal, or either or both of them, where the parties have been unable to resolve their dispute through a meet and confer process.

2.4.1.3 IGRA is repealed or the State's obligation to negotiate a compact is held unconstitutional in a final judicial decision of a federal appellate court.

2.4.2 To effectuate the termination, a notice of termination shall be served upon the Tribe in accordance with Section 2.6 and shall be effective no earlier than twelve (12) months following the date of service of a notice based on subsection 2.4.1.1 and no earlier than six (6) months following the date of service of a notice based on subsection 2.4.1.2 or 2.4.1.3 unless an earlier date is required by law. In the event that a notice of termination based on subsection 2.4.1.1 or 2.4.1.2 is served, the Governor shall commence negotiations in good faith with the Tribe to enter into a new compact pursuant to, and subject to, the provisions of Section 2.7.

2.4.3 Nothing herein shall be construed to impair the State Legislature's power to enact any statute terminating this Compact; however, the State acknowledges the Tribe's position that the State Legislature has no such power.

2.5 Amendments. In the event that IGRA is amended, or any State statute or constitutional provision expanding or reducing the types of Class III Gaming permitted in this State is enacted, either party may request the other party to enter into negotiations in good faith to amend this Compact with respect to the impact on the Compact of the above-referenced change or changes, and the other party must then negotiate in good faith over such amendment.

2.6 Service of Notices. A notice of renewal under Section 2.3 must be mailed by Certified Mail and shall be deemed served on the Governor on the date of mailing. A notice of intention not to renew under subsection 2.3.3 and a

notice of termination under Section 2.4.2 must be mailed by Certified Mail and shall be deemed served on the Tribe on the date of mailing.

2.7 Obligation to Negotiate Following Termination. If the Governor serves a notice rejecting the Tribe's notice of renewal based on subsection 2.3.2, or if the Governor serves a notice of intention not to renew under subsection 2.3.3, or if the Governor serves a notice of termination of the Compact under subsection 2.4.1.1 or 2.4.1.2, the Governor shall immediately thereafter commence negotiations in good faith with the Tribe to enter into a new compact as long as IGRA's requirement of good faith negotiations under 25 U.S.C. § 2710(d)(3)(A) or analogous provision has not been repealed or held unconstitutional by a final decision of a federal appellate court. In any proceeding brought by the Tribe in court pursuant to 25 U.S.C. § 2710(d)(7)(A)(i), or before an arbitral tribunal pursuant to the provisions of subsection 17.2.10 in the event the court declines or is unable to exercise its jurisdiction, the court or arbitral tribunal may take into consideration the reasons stated in the Governor's decision not to renew the compact under subsection 2.3.3.

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ARTICLE 3. AUTHORIZED GAMING ACTIVITIES

3.1 Authorized Games. The Tribe is authorized by this Compact to offer the Indian Lottery Games identified in Exhibit A of this Compact, as amended from time to time in accordance with Sections 3.2 and 3.3.

3.2 Restrictions on Indian Lottery Games. No Indian Lottery Game may be included in Exhibit A of this Compact unless it is permitted to the California State Lottery under the California State Lottery Act.

3.2.1 Indian Lottery Games may not utilize any device that constitutes a slot machine prohibited under California Penal Code sections 330a, 330b, or 330.1, unless, and only to the extent that, a final decision of the California Supreme Court, the U.S. Supreme Court, or the Ninth Circuit Court of Appeals rules that said slot machine prohibition does not apply to the California State Lottery. In the event of a conflict between the final decision of the Ninth Circuit Court of Appeals and the California Supreme Court concerning the above-referenced issue of state law, the final decision of the California Supreme Court shall prevail.

3.2.2 If, after the effective date of this Compact, a final decision of the California Supreme Court, the U.S. Supreme Court, or the Ninth Circuit Court of Appeals construes state law concerning the types of and limitations on lottery games permissible to the California State Lottery under the California State Lottery Act, the parties shall be bound by that final decision for purposes of determining the Indian Lottery Games which are available for authorization under Exhibit A of this Compact or which may remain authorized under Exhibit A of this Compact. In the event of a conflict between such a final decision of the Ninth Circuit Court of Appeals and the California Supreme Court concerning the above-referenced issues of state law, the final decision of the California Supreme Court shall prevail.

3.3 Amendments to Exhibit A of this Compact. If the Tribe wishes to change any of, or add to, the Indian Lottery Games included on Exhibit A of this Compact, it may do so with the consent of the State, whose consent shall not be withheld as long as the Indian Lottery Game is authorized under Section 3.2.

3.4 Safe Harbor for Determination of Game Status.

3.4.1 The Tribe, at its option, may apply to the State Gambling Control Agency for a determination that a gaming activity is not a Class III Gaming activity, including associated electronic, mechanical, or electromechanical equipment, and, thus, whose operation is not subject to this Compact nor a basis for a violation thereof.

3.4.1.1 Applications for approval shall be made to the Division on forms provided by the Division, and shall be accompanied by an application fee of five hundred dollars ($500) for each gaming activity for which approval is sought. Said five hundred dollar ($500) fee will be refunded if the Tribe is making an application concerning the same gaming activity which is the subject of a pending application by another tribal applicant. The Division may require the applicant to pay reasonable additional costs for research relevant to the evaluation of whether the submitted gaming activity is a Class III Gaming activity. Applications shall describe the gaming activity in sufficient detail to enable the State Gambling Control Agency to render an opinion on the question whether the gaming activity constitutes Class III Gaming.

3.4.1.2 In his or her sole and absolute discretion, the Director may reject an application as incomplete, shall state the

reasons therefor, and shall grant the Tribe fifteen (15) days (which may be extended by mutual agreement) to submit an amended application. The Director shall not be obligated to grant more than one opportunity to submit an amended application.

3.4.1.3 The Director may summarily deny the application on the ground that an application is patently without merit. Upon review of an application amended pursuant to subsection 3.4.1.2, the Director may summarily reject the amended application as too incomplete to enable the Director to render an opinion. Upon summary denial or rejection, the Division shall refund the application fee to the Tribe, less the reasonable costs involved in the processing and consideration of the application, and the Tribe may seek judicial review, including a stay or preliminary injunction, as provided under subsection 3.4.4.

3.4.1.4 If the Director has not, within twenty (20) days following submission of an application, summarily denied or rejected the application, then the following shall occur depending on whether Phase I or Phase II of the Gambling Control Act is in effect:

A. <u>Phase I</u>:

(1) The Director shall render an opinion on the question whether the activity that is the subject of the application constitutes Class III Gaming. Prior to rendering an opinion, the Director shall solicit the views of third parties on the issue and provide a reasonable time for receipt of

comments by third parties.

(2) The Tribe may, thereafter, proceed in accordance with California Business and Professions Code section 19858(e). The Board shall provide an opportunity for pre-hearing briefing and oral argument on the application.

B. Phase II: The Director shall make a recommendation to the Commission. Prior to making a recommendation, the Director shall solicit the views of third parties on the issue and provide a reasonable time for receipt of comments by third parties. The Commission shall schedule a hearing on the Director's recommendation in accordance with California Business and Professions Code section 19858A and section 19858.7A, and shall provide an opportunity for pre-hearing briefing and oral argument on the application.

3.4.2 The Tribe may commence the gaming activity that is the subject of the application upon the application's submission to the Division, and may continue to conduct the gaming activity until the expiration of the period specified in subsection 3.4.3.

3.4.3 The Tribe shall discontinue any gaming activity that is the subject of an application within five (5) days of the summary denial or rejection of the application by the Director or upon a final action of the Division or Board, as applicable, or the Commission, finding that it is a Class III Gaming activity.

3.4.4 The Tribe may seek judicial review of any decision made under this Section by the Director, Board or Commission in accordance with California Business and Professions Code section 19804 and, as

applicable, section 19858A(e), in state court only. However, a stay or preliminary injunction of the agency action may only be sought in connection with a summary denial or rejection under subsection 3.4.1.3 herein, and not in connection with a final agency decision under subsections 3.4.1.4.A or 3.4.1.4.B.

3.4.5 No agency action under Section 3.4.3 and no state court action under Section 3.4.4 is intended to bind the National Indian Gaming Commission.

3.5 Prohibition Against Unauthorized Games. The lottery games, as authorized under this Article, are the only forms of Class III Gaming permitted at the Facility under this Compact, and any Class III Gaming activity not permitted under the terms of this Compact is expressly prohibited anywhere on the Reservation or elsewhere. Nothing in this Compact authorizes the use of the internet to conduct lotteries, but this provision shall not be construed to prohibit the use of the internet for purposes of communications among tribal Class III Gaming operations if each such tribe has a compact with the State of California that authorizes such Class III Gaming.

ARTICLE 4. INTEGRITY OF AUTHORIZED GAMING DEVICES

4.1 Designation of Independent Gaming Test Laboratory. The Tribe shall propose to the State Gambling Control Agency, with supporting documentation, an independent gaming test laboratory (hereinafter "Gaming Test Laboratory"), which is (a) competent and qualified to conduct scientific tests and evaluations of Lottery Devices or Lottery Device Systems and to otherwise perform the functions set out in this Article; and (b) licensed or approved to test electronic gaming devices by the states of Nevada, New Jersey, Colorado, Minnesota or Missouri, except that no such Gaming Test Laboratory may be used if determined to be Unsuitable by the State Gambling Control Agency pursuant to Article 5 of this Compact. The retention of the Gaming Test Laboratory is subject to the consent of the State Gambling Control Agency, but the State Gambling Control Agency shall not unreasonably withhold its consent if the Gaming Test Laboratory meets the standards in this Section and if all licenses the laboratory holds with gaming jurisdictions in the United States are in good standing. If, at any time, any of the Gaming Test Laboratory's licenses are suspended, terminated or subject to disciplinary action, the Gaming Test Laboratory shall discontinue its responsibilities under this Article and the Tribe shall propose a new Gaming Test Laboratory as provided herein.

4.2 Establishment of Technical Standards for Lottery Devices and Lottery Device Systems. At least ninety (90) days prior to the purchase, lease or other acquisition of any Lottery Device or Lottery Device System authorized by this Compact:

4.2.1 The Tribe shall (a) request the Gaming Test Laboratory retained pursuant to Section 4.1 to prepare comprehensive technical standards for any such Lottery Device or Lottery Device System and serve such request upon the Division; and (b) cause the Gaming Test Laboratory to submit a draft of such technical standards to the Tribe

and the Division within thirty (30) days.

4.2.2 Neither party shall unreasonably withhold its consent to the draft standards submitted by the Gaming Test Laboratory.

4.2.3 The State Gambling Control Agency and the Tribe shall, within thirty (30) days of the submission of the Gaming Test Laboratory's draft technical standards, either: (a) approve such standards; or (b) serve written objections to the standards. In the event of such objections, the parties shall meet with the Gaming Test Laboratory following the objections to negotiate any requested modifications to the standards. If no agreement is reached within fifteen (15) days of commencement of the negotiations, unless the parties agree otherwise, the standards shall be deemed to be disapproved.

4.2.4 In the event the standards are disapproved under subsection 4.2.3, standards shall be adopted by another Gaming Test Laboratory agreed upon by the parties. If the parties cannot agree on a Gaming Test Laboratory within thirty (30) days of the disapproval, then the standards shall be adopted by a Gaming Test Laboratory selected (a) by an arbitrator chosen by the parties within ten (10) days thereafter, or (b) failing that, by an arbitrator selected by the American Arbitration Association in Los Angeles pursuant to the request of either party. The parties shall share equally the cost of the arbitrator and of the American Arbitration Association. The new Gaming Test Laboratory's adoption of standards shall be final.

4.3 Testing and Approval of Lottery Devices and Lottery Device Systems. No Lottery Device or Lottery Device System may be acquired by the Tribe or exposed for play unless:

4.3.1 The Manufacturer or Distributor which sells, leases or distributes such Lottery Device or Lottery Device System has been determined to be Suitable by the State Gambling Control Agency as required by

this Compact; and

4.3.2 The Lottery Device or Lottery Device System, or a prototype thereof, has been tested, approved and certified by the Gaming Test Laboratory as meeting the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2, in accordance with the following process:

4.3.2.1 The Tribe shall provide, or require that the Manufacturer provide, to the Gaming Test Laboratory two (2) copies of Lottery Device or Lottery Device System illustrations, schematics, block diagrams, circuit analyses, technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format), and any other information requested by the Gaming Test Laboratory. The Tribe shall make all such materials available to the State Gambling Control Agency upon request, subject to the confidentiality provisions of Article 8.

4.3.2.2 If requested by the Gaming Test Laboratory, the Tribe shall require the Manufacturer to transport not more than two (2) working models of the Lottery Device or Lottery Device System to a location designated by the laboratory for testing, examination or analysis. Neither the State nor the Gaming Test Laboratory shall be liable for any costs associated with the transportation, testing, examination, or analysis, including any damage to the components of the Lottery Device or Lottery Device System resulting from the testing, examination or analysis. If requested by the Gaming Test

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Laboratory, the Tribe shall require the Manufacturer to provide specialized equipment or the services of an independent technical expert to assist with the testing, examination and analysis.

4.3.2.3 At the conclusion of each test, the Gaming Test Laboratory shall provide to the State Gambling Control Agency and the Tribe a report that contains findings, conclusions and a certification that the Lottery Device or Lottery Device System conforms or fails to conform to the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2. If the Gaming Test Laboratory determines that it fails to conform to such requirements or technical standards, and if modifications can be made which would bring the Lottery Device or Lottery Device System into compliance, the report may contain recommendations for such modifications. The State will be bound by the findings, conclusions or certifications of the Gaming Test Laboratory for purposes of its enforcement of the provisions of this Compact if it fails to object to such findings, conclusions, or certifications within 180 days of their service on the State Gambling Control Agency.

4.3.3 The Manufacturer or Distributor has assembled and installed all Lottery Devices or Lottery Device Systems in a manner approved by the Gaming Test Laboratory.

4.3.4 Where the Tribe seeks to acquire a Lottery Device or Lottery Device System from the same Manufacturer from which another tribe has acquired them, and has retained, with the State's consent, the same

Gaming Test Laboratory that tested, approved, and certified the Lottery Device or Lottery Device System of that Manufacturer, the Tribe may submit the same report that the Gaming Test Laboratory prepared for that Manufacturer's device or system in satisfaction of the requirements under subsection 4.3.2 as long as the Gaming Test Laboratory's report contains findings, conclusions, and a certification that the Lottery Device or Lottery Device System conforms with the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2.

4.4 Modifications of Approved Lottery Devices or Lottery Device Systems.

4.4.1 No modification to the assembly or operations of any Lottery Device or Lottery Device System may be made after testing and certification unless the Gaming Test Laboratory certifies to the State Gambling Control Agency and the Tribe that the Lottery Device or Lottery Device System as modified conforms to the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2. All such proposed modifications shall be described in a written request made to the State Gambling Control Agency and the Gaming Test Laboratory, which request shall contain information describing the modification and the reason therefor, and provides all documentation required by the Gaming Test Laboratory. In emergency situations where modifications are necessary to preserve the integrity of the Lottery Device or Lottery Device System, the Gaming Test Laboratory is authorized to grant temporary certification of the modifications for up to fifteen (15) days, pending compliance with this Section.

4.4.2 With respect to any modifications proposed to the Lottery Device or Lottery Device System, other than to its assembly or operations, the

Tribe shall advise the Division in writing of any such modification no less than ten (10) days prior to implementing the modification, and the Division shall have the right to direct the Tribe to seek testing and certification of the modification. However, the Tribe shall not be precluded from implementing such modification prior to any such direction by the Division. The modification shall be withdrawn if the Gaming Test Laboratory concludes that the modified Lottery Device or Lottery Device System fails to conform to the requirements specified by Article 3 or Exhibit A of this Compact or by the technical standards established pursuant to Section 4.2.

4.5 Conformity to Technical Standards. Before a Lottery Device or Lottery Device System may be exposed for play, the Tribe shall first have obtained and submitted to the State Gambling Control Agency a written certification from the Manufacturer or Distributor that upon installation, each such Lottery Device or Lottery Device System placed at the Tribe's Facility: (a) conforms precisely to the exact specifications of the Lottery Device or Lottery Device System tested and approved by the Gaming Test Laboratory; and (b) operates and plays in accordance with the requirements specified in Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2. Authorization to operate a Lottery Device or Lottery Device System requires that it operate and play in accordance with the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2; provided that while the failure of such Lottery Device or Lottery Device System to comply with such requirements and standards will suffice as a grounds to enjoin or otherwise terminate said Lottery Device or Lottery Device System's operation, such non-compliance will not be deemed a violation of this Compact as long as the Tribe has relied in good faith on the

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certification of the Manufacturer or Distributor and provided, further, that instead of an injunction or termination of the Lottery Device or Lottery Device System in the event it fails to comply with such requirements or standards, the State may, in its discretion, seek and cause to be imposed other sanctions that the circumstances warrant.

4.6 Ex Parte Communication. Neither party shall directly or indirectly communicate with the Gaming Test Laboratory, whether in writing, by telephone or otherwise, concerning the establishment of standards or the approval of the Lottery Devices or Lottery Device Systems without providing the other party with a reasonable opportunity to participate in such communication. The State and the Tribe shall ensure that copies of all written communications sent to or received from the Gaming Test Laboratory are provided to the other party.

4.7 Payment of Gaming Test Laboratory Fees. The Tribe shall be responsible for the payment of all Gaming Test Laboratory fees and costs in connection with the duties described in this Article. The Tribe shall provide copies of all Gaming Test Laboratory invoices and payments by the Tribe to the Division, which shall have the right to audit such fees pursuant to Article 6.

4.8 Gaming Test Laboratory Duty of Loyalty. The Tribe shall inform the Gaming Test Laboratory in writing that, irrespective of the source of payment of its fees, the Gaming Test Laboratory's duty of loyalty and reporting requirements run equally to the State and the Tribe.

4.9 Random Inspections. The Division may inspect one Lottery Device or Lottery Device System for each type of Indian Lottery Game specified in Exhibit A of this Compact on a random basis every six (6) months to confirm that it operates and plays in accordance with the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2. In any such inspection the Division may utilize the services of a gaming test laboratory, provided that it

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meets the criteria set forth in subparagraphs (a) and (b) of Section 4.1. The Tribe shall pay for all reasonable costs incurred for such inspection and testing by the Division.

ARTICLE 5. APPROVAL OF GAMING EMPLOYEES AND OTHER ASSOCIATED PERSONS

5.1 Jurisdiction Over Persons Associated with Class III Gaming.

5.1.1 The Viejas Band as a governmental entity, is not subject to licensure by the State.

5.1.2 The Class III Gaming activities authorized by this Compact constitute "controlled games" within the meaning of California Penal Code section 337j(e)(1).

5.1.3 The State and the Tribe shall have concurrent jurisdiction over all Persons with respect to their association with the Tribe's Class III Gaming operation.

5.1.4 As authorized by 25 U.S.C. §§ 1321 and 1322, 18 U.S.C. section 1166(d), and 25 U.S.C. § 2710(d)(3)(C), and except as otherwise expressly provided in this Article, the State's jurisdiction under the Gambling Control Act (whether civil, criminal, or regulatory) shall extend over all Persons and entities who are or may become associated with the Tribe's Class III Gaming operation.

5.1.5 Except as otherwise expressly provided in this Article, all Persons who are or seek to become associated with the Tribe's Class III Gaming operation, and who are or could be required to apply for and obtain a state determination of Suitability under this Compact, are subject to the jurisdiction of the State Gambling Control Agency, and shall pay all fees and deposits with respect to any required applications for a determination of Suitability, to the same extent as are Persons who are or may be required to apply for a license in connection with an Off-Reservation Gambling Establishment.

5.1.6 It is the purpose of this Article to enable the State and the Tribe to prevent employment of Unsuitable Persons in any position that may have a significant influence over the conduct of a Class III Gaming

activity, and to prevent the conduct of business transactions related to Class III Gaming between the Tribe and Unsuitable Persons.

5.1.7 Except as expressly provided in this Article, other than the parties to this Compact, no Person who is or may be subject to the jurisdiction of the State under the Gambling Control Act by virtue of this Compact, including members of the Tribe, shall have a remedy under this Compact against the State, or any official or agency thereof, as a result of any action taken, not taken, or threatened to be taken by the State. Except as expressly provided otherwise in this Article, the availability of any remedy for such action, inaction, or threatened action shall be governed solely by the Gambling Control Act.

5.2 Tribal Gaming Agency.

5.2.1 In order to carry out the Tribe's government-to-government relationship with the State in the area of licensing and regulation of personnel associated with the Tribe's Class III Gaming operation, and to protect the health, safety and welfare of members of the public and the Tribe, the Tribe shall enact an ordinance that establishes a Tribal Gaming Agency and provides that the Tribal Gaming Agency, as an agency of the Tribe's government, is bound by the provisions of this Compact.

5.2.2 The Tribal Gaming Agency shall have the primary responsibility under the Compact for the on-site regulation of Persons associated with the Tribe's Class III Gaming operation.

5.2.3 No Person may associate with the Tribe's Class III Gaming operation, unless that Person possesses all necessary licenses and permits from the Tribal Gaming Agency.

5.2.4 The Tribal Gaming Agency shall be independent of the Tribe's Gaming operation and shall have at least the following powers and

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responsibilities:

5.2.4.1 To employ qualified personnel who shall have unrestricted access to the Tribe's Class III Gaming operation in order to carry out the Tribal Gaming Agency's responsibilities under this Compact.

5.2.4.2 To perform the regulatory functions assigned to the Tribe by this Article and to the Tribal Gaming Agency by other provisions of this Compact.

5.2.4.3 To conduct background investigations and issue permanent and temporary licenses and work permits to employees of, and other Persons associated with, the Tribe's Class III Gaming operation, as required by this Compact or tribal ordinance, and to renew, suspend, deny or revoke said licenses or permits.

5.2.4.4 To impose fines or other sanctions within the Tribe's jurisdiction against Persons associated with the Tribe's Class III Gaming operation including, but not limited to employees thereof.

5.2.4.5 To timely make its background investigation reports and actions it takes on licenses and work permits available to the State Gambling Control Agency as required by this Compact.

5.2.4.6 To designate a Person to serve as the Tribe's principal liaison with the Division and/or Commission in connection with the implementation of the provisions of this Compact.

5.2.5 The Tribal Gaming Agency may perform other functions concerning the Tribe's Class III Gaming operation where assigned by the Tribe or requested by the State Gambling Control Agency, so long as said

functions are consistent with its responsibilities under this Compact.

5.2.6 The Tribe shall enact a conflict-of-interest code for the Tribal Gaming Agency which, at a minimum, shall include the following provisions:

5.2.6.1 Members of the Tribal Gaming Agency and their Immediate Family Members shall not have any financial interest in the gaming regulated by the Agency, other than a financial or similar benefit earned pursuant to tribal ordinance or resolution solely by virtue of being members of the Tribe.

5.2.6.2 No Tribal Gaming Agency member shall participate in the consideration of any decision before the Tribal Gaming Agency involving his or her Immediate Family Member or any matter in which the member or his or her Immediate Family Member could be deemed to have a financial interest under California Government Code section 87103, other than a financial or similar benefit earned pursuant to tribal ordinance or resolution solely by virtue of being a member of the Tribe.

5.3 Suitability of Persons Associated With Class III Gaming, Generally.

5.3.1 The Tribe shall not conduct Class III Gaming in association with any Person, including a member of the Tribe, who is required to apply for a state determination of Suitability, if the Person's application for such a determination has been denied, if the Person's state determination of Suitability has been suspended or revoked, or if the Person's state determination of Suitability has expired and the Person has failed to reapply.

5.3.2 The Tribal Gaming Agency may require any Person to apply for and obtain a state determination of Suitability as a condition of

association with the Tribe's Class III Gaming operation.

5.3.3 The State Gambling Control Agency may, at any time, require that a Person described in California Business and Professions Code sections 19842 or 19842A, or the implementing regulations of the State Gambling Control Agency, including a member of the Tribe, apply for a determination of Suitability if the Person is associated with the conduct of Class III Gaming. The terms "gambling enterprise" or "gambling establishment," as used in those statutes, shall be understood to refer to the Tribe's gaming operation. The Manufacturer and any Distributor of a Lottery Device or Lottery Device System authorized by this Compact and operated at the Facility, and a Gaming Test Laboratory selected pursuant to Section 4.1 or subsection 4.2.4, is a Person who may be required to apply for a determination of Suitability by the State Gambling Control Agency.

5.4 Suitability of Tribal Members Associated with Class III Gaming.

5.4.1 Prior to requiring the filing of an application by an enrolled member of the Tribe for a determination of Suitability pursuant to subsection 5.3.3, the Director shall advise the Tribal Gaming Agency of those concerns that warrant an application for a determination of Suitability, in order to allow the Tribe an opportunity to resolve informally those concerns consistent with protecting the public interest. Resolution of those concerns through a government-to-government consultation is preferred; however, if the State's concerns are not resolved by this informal process within ten (10) days, then the following procedures shall apply, depending upon whether Phase I or Phase II of the Gambling Control Act is in effect:

A. Phase I Procedures:

(1) The Director shall serve on the Tribe a written request

that the Tribe require the member to apply for a determination of Suitability.

(2) Within ten (10) days after receiving a copy of the request, the Tribe may do one of the following:

(a) Require the member to apply for a state determination of Suitability, in which case the member shall file an application for a state determination of Suitability within forty (40) days from the date of service of the Director's request under subsection 5.4.1.A(1). Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of subsection 5.3.1, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in subsection 5.4.1.A(2)(a) to constitute a denial of an application for a determination of Suitability.

(b) File an objection with the Board on the ground that the member is not a Person described in California Business and Professions Code section 19842, or the implementing regulations of the Division, or on the ground that the member is not and shall not be associated with the conduct of Class III Gaming. No Person other than the Tribe may file an objection under

this subsection.

(3) Upon receipt of a timely filed objection pursuant to subsection 5.4.1.A(2)(b), the Board shall schedule an informal hearing on the objection. The decision of the Board is not reviewable except by an action in state court initiated by the Tribe or the enrolled member in issue, subject to the provisions of California Business and Professions Code section 19804.

(4) If after the informal hearing, the Board affirms the Director's action, the Tribe shall, within ten (10) days after service of notice of the Board's action, require the member to apply for a state determination of Suitability. The member shall file an application for a state determination of Suitability within forty (40) days after the date of service of the notice of the Board's action. Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of Section 5.3.1, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in subsection 5.4.1.A(4) to constitute a denial of an application for a determination of Suitability.

B. Phase II Procedures:

(1) The Director shall make a written recommendation to the Commission.

(2) Upon receipt of the Director's recommendation, the

Commission shall schedule an informal hearing with the Tribe. If the Director recommends an order that the member apply for a determination of Suitability, the Tribe may object to the recommendation on the ground that the member is not a Person described in California Business and Professions Code section 19842A or the implementing regulations of the Commission, or on the ground that the member is not and shall not be associated with the conduct of Class III Gaming. The decision of the Commission is not reviewable except by an action in state court initiated by the Tribe or the enrolled member in issue, subject to the provisions of California Business and Professions Code section 19804.

(3) If, after the informal hearing, the Commission requires the filing of an application for a determination of Suitability, the Tribe shall, within ten (10) days after service of notice of the Commission's action, require the member to apply for a state determination of Suitability. The member shall file an application for state determination of Suitability within forty (40) days after the date of service of notice of the Commission's action. Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of subsection 5.3.1, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the

time period specified in Section 5.4.1.B(3) to constitute a denial of an application for a determination of Suitability.

5.5 Suitability of Key Employees, Generally.

5.5.1 Except as provided in Section 5.6, the Tribe shall require every Person occupying a Key Employee position to apply for a state determination of Suitability not later than ten (10) days after commencement of any responsibilities or duties of the Key Employee position.

5.5.2 The Tribe shall not permit any Person, including a member of the Tribe, to occupy a Key Employee position if the Person's application for a state determination of Suitability has been denied, or if the Person's state determination of Suitability has been suspended or revoked, or if the Person's state determination of Suitability has expired and the Person has failed to reapply.

5.6 Suitability of Key Employees, Tribal Members.

5.6.1 An enrolled member of the Tribe who occupies a Key Employee position shall not be required to apply for a state determination of Suitability unless requested to do so by the Director.

5.6.2 Prior to requiring the filing of an application by an enrolled member of the Tribe, the Director shall advise the Tribal Gaming Agency of those concerns that warrant an application for a determination of Suitability, in order to allow the Tribe an opportunity to resolve informally those concerns consistent with protecting the public interest. Resolution of those concerns through a government-to-government consultation is preferred; however, if the State's concerns are not resolved by this informal process within ten (10) days, then the following procedures shall apply depending on whether Phase I or Phase II of the Gambling Control Act is in effect:

A. Phase I Procedures:

(1) The Director shall serve on the Tribe a written request that the member apply for a determination of Suitability.

(2) Within ten (10) days after service of a copy of the request, the Tribe may do one of the following:

(a) Require the member to apply for a state determination of Suitability, in which case the member shall file an application for a state determination of Suitability within forty (40) days from the date of service of the Director's request under subsection 5.6.2.A(1). Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of subsection 5.5.2, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in subsection 5.6.2.A(2)(a) to constitute a denial of an application for a determination of Suitability.

(b) File an objection with the Board on the ground that the member is not a Key Employee as defined in this Compact. No Person other than the Tribe may file an objection under this subsection.

(3) Upon receipt of a timely filed objection pursuant to

subsection 5.6.2.A(2)(b), the Board shall schedule an informal hearing on the objection. The decision of the Board is not reviewable except by an action in state court initiated by the Tribe or the enrolled member in issue, subject to the provisions of California Business and Professions Code section 19804.

(4) If, after the informal hearing, the Board affirms the Director's action, the Tribe shall, within ten (10) days after service of notice of the Board's action, require the member to apply for a state determination of Suitability. The member shall file an application for a state determination of Suitability within forty (40) days after the date of service of notice of the Board's action. Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of subsection 5.5.2, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in this subsection 5.6.2.A(4) to constitute a denial of an application for a determination of Suitability.

B. Phase II Procedures:

(1) The Director shall make a written recommendation to the Commission.

(2) Upon receipt of the Director's recommendation, the Commission shall schedule an informal hearing with the Tribe. If the Director recommends an order that

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the member apply for a determination of Suitability, the Tribe may object to the recommendation on the ground that the member is not a Person described in California Business and Professions Code section 19842A or the implementing regulations of the Commission, or on the ground that the member has not and shall not be associated with the conduct of Class III Gaming. The decision of the Commission is not reviewable except by an action in state court initiated by the Tribe or enrolled member in issue, subject to the provisions of California Business and Professions Code section 19804.

(3) If, after the informal hearing, the Commission requires the filing of an application for a determination of Suitability, the Tribe shall, within ten (10) days after service of notice of the Commission's action, require the member to apply for a state determination of Suitability. The member shall file an application for a state determination of Suitability within forty (40) days after the date of service of notice of the Commission's action. Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of subsection 5.5.2, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in subsection 5.6.2.B(3) to constitute a denial of an application for a determination of Suitability.

5.6.3 Safeguards for Current Key Employees. The fact that a Key Employee was associated with the Tribe's Class III Gaming activities prior to the execution of this Compact shall not in and of itself be a ground for denying, suspending, or revoking a state determination of Suitability.

5.7 Term of a State Determination of Suitability. The term of a state determination of Suitability shall be one (1) year from the date of issuance.

5.8 Required Reports.

5.8.1 The Tribe shall provide the Division with all documents, reports, records, and audits that are required from owners of Off-Reservation Gaming Establishments under the Gambling Control Act and regulations of the State Gambling Control Agency, within the time period and in the manner required of all such owners, except for audited financial statements, which are governed by Article 6 of this Compact, or to the extent that any such requirement conflicts with an express provision of this Compact regarding reporting.

5.8.2 The State Gambling Control Agency may, after consultation with the Tribe, adopt reasonable protocols for the submission of documents, reports, records, and audits that are not required from Off-Reservation Gambling Establishments, if the documents, reports, records, or audits peculiarly relate to the conduct of the Class III games authorized by this Compact.

5.9 Employee Work Permits.

5.9.1 No Person shall be employed as a Gambling Enterprise Employee in the Tribe's Class III Gaming operation unless the Person has first applied for, obtained, and renews annually a work permit from the Tribal Gaming Agency; provided that during the first thirty (30) days following the effective date of this Compact pursuant to Section 2.1, the Tribe may, in its discretion, issue a temporary work permit to an

employee who has not filed an application therefor, except that the temporary work permit shall expire thirty (30) days from the date of issuance unless an initial application has been filed and transmitted to the Division in accordance with subsection 5.9.2.

5.9.2 An initial application filed with the Tribal Gaming Agency for a work permit shall be accompanied by two duplicate completed fingerprint cards, on a form approved by the Division, and two duplicate photographs of the applicant, which photographs must have been taken not earlier than three (3) months before the date of filing the application.

5.9.2.1 The Tribe shall transmit, for receipt by the Division within forty-eight (48) hours, excluding Saturdays, Sundays, and state holidays, a copy of all initial applications for work permits, together with the following:

(1) One of the two fingerprint cards

(2) One of the two photographs.

(3) An initial application fee of fifty dollars ($50) for each application; provided however, that the State may reduce the amount of the initial application fee to twenty-five dollars ($25) in consideration of the background investigation that was conducted by the Tribal Gaming Agency; provided further that, after January 1, 2001, the application fee herein shall be changed to equal the application fee charged by the Division for work permits in connection with Off-Reservation Gambling Establishments.

5.9.2.2 The Tribe shall transmit, for receipt by the Division

within forty-eight (48) hours, excluding Saturdays, Sundays, and state holidays, a copy of all renewal applications for work permits, together with a twenty-five dollar ($25) renewal fee for each application; provided that after January 1, 2001, the renewal fee shall be changed to equal the renewal fee charged by the Division for work permits in connection with Off-Reservation Gambling Establishments.

5.9.3 The Tribe may, in its discretion, issue a temporary work permit to the applicant.

5.9.4 The provisions of this subsection 5.9.4 and of subsections 5.9.4.1, 5.9.4.2 and 5.9.4.3 apply to all applicants who are not enrolled members of the Tribe. If, within ninety (90) days of receipt by the Division of the application, the State has not notified the Tribe of its objection to the applicant, the application for the employee work permit shall be deemed approved by the State, and the Tribe, in its discretion, may issue, renew, or deny the application; provided that nothing herein shall be construed to affect the State's powers under subsection 5.9.7, or the Tribe's obligation under subsections 5.5.2 and 5.9.8; provided further that the ninety (90) day period described in this subsection shall not begin to run during any period in which the conduct of Class III Gaming is precluded under subsection 18.3.1. If the Division objects to the issuance of a work permit, written notice of the objection shall be served on the applicant (or the employee) and on the Tribe.

5.9.4.1 In Phase I of the administration of the Gambling Control Act, procedures for obtaining review of the Division's objection, if any, shall be governed by California Business and Professions Code section

19910.5, subdivisions (c) through (e), inclusive, and related regulations of the Division and Board. In Phase II of the administration of the Gambling Control Act, such procedures shall be governed by California Business and Professions Code section 19910.5A, subdivisions (c) through (e), inclusive, and related regulations of the Commission.

5.9.4.2 Upon receipt of notice from the Division that no request for review of the Division's objection was filed within the time required by statute and the State Gambling Control Agency's regulations, the Tribal Gaming Agency shall cancel any temporary work permit and deny the application.

5.9.4.3 Where review of the Division's objection has been sought, written notice of the subsequent action by the Board or the Commission, as applicable, shall be served on the applicant and on the Tribe. Within ten (10) business days after service of notice of an adverse action by the Board or the Commission, the Tribal Gaming Agency shall cancel any temporary work permit and deny the application, unless the effectiveness of the state agency's order is stayed by a state court; provided however, that any action to review the decision and order of the state agency shall be governed by California Business and Professions Code section 19804.

5.9.5 The provisions of this subsection 5.9.5 apply only to applicants who are enrolled members of the Tribe. If, within ninety (90) days of receipt by the Division of the application, the Division objects to the

issuance of a work permit, written notice of the objection shall be served on the applicant (or the employee) and on the Tribe; provided however, that the ninety (90) day period described in this subsection shall not begin to run during any period in which the conduct of Class III Gaming is precluded under subsection 18.3.1. The Tribal Gaming Agency and the Division shall thereupon confer over the question whether the work permit should be denied by the Tribal Gaming Agency, whose decision shall be determinative of the issue. However, nothing herein shall be construed to affect the State's powers under subsection 5.9.7, or the Tribe's obligation under subsections 5.5.2 and 5.9.8.

5.9.6 An employee work permit shall expire if the holder ceases to be employed as a Gambling Enterprise Employee in the Facility for more than ninety (90) days.

5.9.7 The State may revoke a work permit issued by the Tribal Gaming Agency, whether to a member of the Tribe or otherwise, on any of the grounds stated in California Business and Professions Code sections 19912 or 19912A, in accordance with proceedings conducted pursuant to Article 9.5 (commencing with section 19920) of the California Business and Professions Code, including, in Phase II, California Business and Professions Code sections 19920A and 19921A, and related regulations of the Division, Board, or Commission.

5.9.8 The Tribe shall terminate any employee whose work permit has been revoked pursuant to this Section, within ten (10) business days after service of notice of the action by the Board or the Commission, unless the effectiveness of the state agency's action is stayed by a state court; provided however, that any action to review the decision and order of the state agency shall be governed by California

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Business and Professions Code section 19922.

5.10 Application and Investigation Procedures. Applications to, and background investigations by, the State, including payment of all fees and deposits, shall be governed by the Gambling Control Act and regulations of the State Gambling Control Agency, except to the extent that those regulations conflict with express provisions of this Compact.

5.11 Transportation of Lottery Devices.

5.11.1 The Tribe shall keep a written list of the date of receipt of each Lottery Device and the serial number of each Lottery Device, and shall provide such list to the Director immediately upon request. All records required by this Section must be maintained for five years.

5.11.2 The Tribe shall not permit the removal, disposal, or transportation of a Lottery Device from the Reservation without the written approval of the Director. Applications for approval to remove, dispose of, or transport a Lottery Device from the Reservation must be made, processed, and determined in such manner and using such forms as the Director may reasonably prescribe.

5.11.3 If the Director does not deny the application for approval to remove, dispose of, or transport the Lottery Devices off the Reservation within five (5) working days of receipt of a completed application, the application shall be deemed to be approved; provided however, that the five (5) day period shall not begin to run during any period in which the conduct of Class III Gaming is precluded under subsection 18.3.1. An application may be denied for either of the following reasons:

5.11.3.1 The Lottery Device would be transported to a destination where possession or operation of the device is unlawful.

5.11.3.2 The Person distributing, transporting, or receiving the

Lottery Device is or would be found to be Unsuitable for association with gambling in California.

5.11.4 Upon request, the Tribe shall permit an agent of the Division to inspect all Lottery Devices prior to their transport off the Reservation.

5.11.5 After the effective date of this Compact, Persons who knowingly distribute or transport a Lottery Device or gambling device to a destination where possession or operation of the device is unlawful are deemed to be Unsuitable for association with gambling in California. Nothing herein shall be construed to diminish the authority of the State Gambling Control Agency to base a determination of Unsuitability on similar conduct occurring prior to the effective date of this Compact.

ARTICLE 6. ACCOUNTING AND AUDITS

6.1 Books and Records. The Tribe shall make and keep books and records which accurately and fairly reflect each day's transactions, including but not limited to receipt of funds, expenses, prize claims, prize disbursements or prizes liable to be paid, and other financial transactions of or related to the Tribe's gaming operations, so as to permit preparation of monthly and annual financial statements in conformity with Generally Accepted Accounting Principles as applied to the gaming industry and to maintain daily accountability, and which shall be susceptible of an annual audit in accordance with this Compact. Permanent accounting books and records shall be maintained in accordance with Generally Accepted Accounting Principles. A chart of accounts shall be adopted that will ensure consistency, comparability, and effective disclosure of financial information. To the extent reasonable and practicable, and not inconsistent with the Tribe's obligations under federal law, the chart of accounts shall conform to the chart of accounts (if any) required to be maintained by Off-Reservation Gambling Establishments under regulations of the State Gambling Control Agency.

6.2 Additional Reports and Records Related to Financial Transactions.

6.2.1 The Tribe shall maintain all records and shall make all reports required by the Bank Secrecy Act, Pub. L. 91-508, as amended, and the regulations for the implementation thereof, including 31 CFR Part 103, as amended from time to time. If the Tribe, for any reason, is not subject to the requirements of the Bank Secrecy Act, or the implementing regulations adopted thereunder, then the Tribe shall be subject to the requirements imposed upon financial institutions under Title 11 (commencing with section 14160) of Part 4 of the California Penal Code.

6.2.2 Notwithstanding 31 CFR section 103.51, agents of the Department

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of Justice shall have access to and may inspect records required to be maintained pursuant to Subpart C (commencing with section 103.31) of 31 CFR Part 103, subject to the provisions of Article 8 of this Compact.

6.2.3 If requested to do so by the Division, the Tribe shall contemporaneously submit to the Division copies of all reports, letters, and other documents filed with the National Indian Gaming Commission pursuant to 25 CFR section 571.13. All such reports, letters, and documents shall be treated in accordance with Article 8 of this Compact.

6.3 Class III Accounting and Auditing Procedures.

6.3.1 The Tribe shall, at its own expense, cause the annual financial statements of the Class III Gaming operations to be audited in accordance with Generally Accepted Auditing Standards as applied to audits for the gaming industry by a certified public accountant licensed by the State Board of Accountancy. Such audit may be conducted in conjunction with any other independent audit of the Tribe, provided that the requirements of this Section are met, and provided further that, except as otherwise provided in this Compact, the information in said audit not related to Class III Gaming need not be submitted to the Division under subsections 6.3.3 and 6.3.6. Prior to engaging a certified public accountant or accountants, the Tribe shall notify the Division of its intended selection or selections and shall take into consideration objections raised by the Division concerning the competency or trustworthiness of the Person or Persons chosen.

6.3.2 The annual financial statements shall be prepared on a comparative basis for the current and prior calendar or fiscal year and shall present the financial position and results of operations in conformity

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with Generally Accepted Accounting Principles as applied to the gaming industry.

6.3.3 A copy of the current audited financial statement, together with the report thereon of the Tribe's independent auditor, shall be submitted on an annual basis to the Division not later than one hundred twenty (120) days following the end of the accounting period under review.

6.3.4 The Tribe shall require its independent auditor to render the following additional reports:

6.3.4.1 A report on the material weaknesses, if any, in accounting and internal controls.

6.3.4.2 A report expressing the opinion of the independent auditor based on his or her examination of the financial statements, on the extent to which the Tribe's Class III Gaming operation has followed in all material respects during the period covered by the examination the system of accounting and internal controls adopted by the Tribe. Whenever in the opinion of the independent auditor, the Tribe's Class III Gaming operation has deviated from the system of accounting and internal controls, or the accounts, records, and control procedures examined are not maintained by the Tribe in accordance with the system of accounting and internal controls adopted by the Tribe, the report shall enumerate such deviations in accordance with Generally Accepted Auditing Standards as applied to audits for the gaming industry. The independent auditor shall also report on areas of the system no longer considered effective, and shall make recommendations in writing regarding improvements in the system of

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accounting and internal controls.

6.3.5 The Tribe's independent auditor shall retain a copy of each audit report, together with copies of all engagement letters, management letters, supporting and subsidiary documents, and other work papers in connection therewith, for a period of not less than three (3) years.

6.3.6 A copy of the reports required by subsection 6.3.4 and a copy of any other reports rendered by the Tribe's independent auditor on accounting and internal controls, administrative controls, or other matters relating to the Tribe's accounting or operating procedures with respect to its Class III Gaming operation shall be submitted to the Division by the Tribe not later than one hundred twenty (120) days following the end of the accounting period under review or within thirty (30) days of receipt, whichever is earlier.

6.3.7 The Division shall, upon its request, be provided copies of any engagement letter and management's representation letter, and shall be given reasonable access to the auditor's work papers as the Division deems necessary to ensure compliance with this Compact by the Tribe.

6.3.8 If an independent auditor who was previously engaged to audit the Tribe's financial statements resigns or is dismissed as the Tribe's auditor, or another accountant is engaged as an independent auditor of the Tribe's Class III Gaming operations, the Tribe shall submit a report to the Division within ten (10) days following the end of the month in which such event occurs, setting forth the following:

6.3.8.1 The date of such resignation, dismissal or engagement.

6.3.8.2 Whether in connection with the audits of the two most recent years preceding such resignation, dismissal, or engagement there were any material disagreements with the former auditor on any matter of accounting

principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former auditor caused or would have caused him to make reference in his report to the subject matter of the disagreement, including a description of each such disagreement. Those disagreements to be reported include those both resolved and unresolved.

6.3.8.3 The Tribe shall request the former auditor to furnish to the Tribe a letter addressed to the Division stating whether he or she agrees with the statements made by the Tribe pursuant to subsection 6.3.8. Such letter shall be submitted to the Division as an exhibit to the reports required by subsection 6.3.4.

6.3.9 Nothing herein shall be construed to affect the right of the Department of Justice to conduct audits for the purpose of confirming compliance by the Tribe with the provisions of this Compact. Access to books and records for purpose of such audits shall be governed by Article 7.

ARTICLE 7. MONITORING

7.1 Access. The Division shall, pursuant to the provisions of this Compact, have the authority to monitor the Tribe's Class III Gaming operations to ensure that said operations are conducted in compliance with the provisions of this Compact. In order to properly monitor the Tribe's Class III Gaming operations, duly authorized personnel of the Division shall have the following access:

7.1.1 Access to Public Areas. The Division shall have free and unrestricted access to all public areas in the Facility at any time the Facility is open to persons other than employees of the Facility, with or without giving prior notice to the Tribe. Areas in the Facility that are temporarily closed to the public shall continue to be treated as public areas for purposes of access under this subsection.

7.1.2 Access to Non-Public Areas.

7.1.2.1 For purposes of subsection 7.1.2, the following terms shall have the following meanings:

A. "Adequate justification" means that the Division has a reasonable suspicion, based on information in its possession, that the Compact is being violated. Nothing herein shall be construed as requiring the Division to disclose the basis for its suspicion as part of the notice required under subsection 7.1.2.2.A; however, the State may disclose the basis of its suspicion if it so chooses.

B. The "notification" described in subsection 7.1.2.2.B shall be effective only if it includes the following:

(1) A listing of the names of all personnel authorized by the Division to make the specific inspection of the non-public areas that has been

requested.

(2) The name, title, and telephone number of a supervisory official in the Division who can immediately confirm to the Tribal Gaming Agency's duty officer that the Division representatives who are listed in accordance with subsection 7.1.2.1.B(1) are authorized to make the inspection.

C. "Duty officer" means a representative of the Tribal Gaming Agency with authority to admit authorized representatives of the State to non-public areas of the Facility.

D. The "identification" required under subsection 7.1.2.2.D shall be:

(1) A facially valid credential identifying the bearer as a duly authorized agent or representative of the Division; together with

(2) A facially valid identification badge issued by the Tribe to the Division pursuant to subsection 7.2.

7.1.2.2 Except as set forth in subsection 7.1.2.3, authorized personnel of the Division shall be granted free and unrestricted access to all non-public areas of the Facility for the purpose of monitoring compliance with this Compact, provided that all of the following four conditions are satisfied:

A. The Division has represented in writing that it has adequate justification for the access at or before the time access to the non-public areas is requested;

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B. The Division has given at least 24 hours' prior written notification to the Tribal Gaming Agency of the intended visit;

C. The authorized Division personnel has contacted the Tribal Gaming Agency duty officer at the time that access is sought; and

D. The authorized Division personnel show the Tribal Gaming Agency duty officer proper identification at the time that access is sought, and the duty officer is able to confirm by telephone, facsimile or otherwise with a supervisory official of the Division that the Division personnel are authorized to make the inspection.

7.1.2.3 Notwithstanding anything to the contrary in subsection 7.1.2, within any calendar year, the Division may have access to non-public areas of the Facility:

A. On up to twelve (12) occasions, without the representation of the justification required under subsection 7.1.2.2.A; and

B. On up to an additional six (6) occasions, without the notice required in subsection 7.1.2.2.B above, but only if

(1) Adequate justification and the information described in subsections 7.1.2.1.B (1) and (2) is given in writing to the Tribal Gaming Agency duty officer at the time that the non-noticed access is sought, and

(2) The provisions of subsection 7.1.2.2.D are satisfied.

7.1.2.4 If the effective date of the Compact does not fall on a

date in January, the maximum number of occasions on which access is allowed under subsections 7.1.2.3.A and B during the first calendar year of the Compact shall be prorated for the remainder of that calendar year. If such proration results in a fraction, the number of occasions shall be rounded up to the next whole number.

7.1.2.5 The Tribe shall ensure that the Tribal Gaming Agency's duty officers are provided with updated information concerning the number of official visits made pursuant to subsection 7.1.2.3.

7.1.2.6 Representatives of the Tribal Gaming Agency shall be permitted to accompany the Division's representatives during visits to non-public areas of the Facility.

7.1.2.7 While exercising access in non-public areas of the Facility pursuant to this Section, authorized Department personnel shall display on their person identification badges issued by the Tribe, as described in Section 7.2, together with photo identification badges issued by the Department.

7.1.3 Books and Records. Notwithstanding subsection 7.1.2, upon reasonable notice to the Tribal Gaming Agency, personnel authorized by the Department, including, without limitation, auditors on contract with the Department, shall be granted unrestricted access, during reasonable business office hours, to all books and records of the Facility for the purpose of monitoring the Tribe's compliance with this Compact and, as reasonably necessary, copying books and records for said purpose. The Tribe shall make available to the Department sufficient office space in which Department personnel

may inspect records and maintain files.

7.1.4 Non-Interference with Employees. In making any inspection of the Facility, personnel of the Department shall not interfere with the performance of duties by employees of the Facility by direct interaction with Facility employees. Upon reasonable request therefor, the Tribe shall use its best efforts to make Facility employees available for confidential interviews by Department personnel at all reasonable times when the Facility is open for business; provided that the Facility's general manager shall be notified and may attend such interviews, but upon the request of the Department's agent all other persons shall be excluded. If there is no general manager of the Facility or he or she is unavailable, the Tribal Gaming Agency shall be so notified. Nothing herein shall be construed to preclude the Department from interviewing Facility employees who are agreeable thereto after work outside the workplace and outside the presence of tribal officials, nor shall anything herein be construed to preclude the Department's auditors from requesting books, records, or information from Facility employees with responsibility for such books, records, or other information.

7.2 Tribal Badges. There shall be no obligation that a duly authorized agent or representative of the Division provide a facially valid identification badge issued by the Tribe in accordance with subsections 7.1.2.1.D(2) or 7.1.2.2.D or 7.1.2.7, unless (A) the Tribe gives written notice to the Division that it seeks to have the agents and representatives of the Division show such badges pursuant to those subsections and (B) thirty (30) days prior to the effective date of the notice the Tribe delivers to the Division ten (10) identification badges to be used by authorized Department personnel in carrying out their duties under this Article. Such identification badges shall

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be made of a durable material permitting repeat uses of the badge. In the event the Tribe makes changes in identification badges, and not less than thirty (30) days before the effective date of those changes, the Tribe shall forthwith deliver ten (10) new badges to the Division for use by authorized personnel. Failure by the Tribe to deliver currently recognized identification badges to the Division shall constitute justification for authorized personnel to enter upon public and non-public areas of the Facility with Department identification alone. The Division shall ensure that identification badges supplied by the Tribe are kept in a secure place and are distributed only to authorized Department personnel for use in carrying out its duties or powers under this Compact.

7.3 Monitoring Reports. Within seventy-two (72) hours following any such monitoring visit or inspection in which any alleged violation is noted, the Division shall provide the Tribal Gaming Agency with a report noting any alleged violation and describing each such violation in sufficient detail to make correction possible, unless the Division has reasonable cause to believe that the Tribe or Tribal Gaming Agency is participating in said violation.

7.4 Law Enforcement Unaffected. This Article shall not affect any access or rights provided to state and local law enforcement officers under Article 14.

ARTICLE 8. CONFIDENTIALITY

8.1 Purpose. Disclosure of financial and other information and records by the Tribe pursuant to this Compact is essential to the ability of the State to ensure compliance by the Tribe with the terms and conditions of this Compact and is therefore necessary for the protection of the public health, safety, and welfare of the people of California. The confidentiality provisions of this Article are necessary to ensure ongoing and candid disclosure of information by the Tribe as required by this Compact.

8.2 Public Records Act. In the event of any request to the State under the California Public Records Act seeking disclosure of records obtained from the Tribe pursuant to this Compact or of records containing information obtained from the Tribe pursuant to this Compact, where the record has been designated "TRADE SECRET" or "PERSONAL INFORMATION" pursuant to Section 8.3, the State shall object to disclosure on the basis of Government Code section 6255 on the ground that the Tribe and the State agree that the public interest served by not making the disclosure clearly outweighs the public interest served by disclosure of the record. In the event that a Person institutes legal proceedings for the purpose of obtaining records pursuant to such a request, the State shall give reasonable prior notice to the Tribe of the action and will defend its assertion of the exemptions identified in its response to the Public Records Act request; provided however, that if the State, after consultation with the Tribe, determines that the confidentiality of the record has been waived, the State shall so notify the Tribe and need not thereafter defend its assertion of the exemption, in which case the State shall nevertheless withhold release of the record for two (2) court days unless otherwise ordered by a court; provided further, that the State shall have no duty to appeal from an adverse ruling.

8.3 Trade Secrets and Personal Information. The State shall preserve the confidentiality of trade secrets and personal information obtained from the

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Tribe in accordance with the provisions of this Section:

8.3.1 The Tribe is entitled to designate any record provided to the State which the Tribe believes constitutes a trade secret, as defined under California Civil Code section 3426.1, or constitutes personal information under the Information Practices Act of 1977, California Civil Code section 1798 *et seq.*, by marking on the first page of the document "TRADE SECRET" or "PERSONAL INFORMATION," respectively. The Tribe shall exercise good faith in making this designation.

8.3.2 In any case where the State has removed records from the Facility and the Tribe has not had an opportunity to examine those records for purposes of making a designation under this Section, the records shall be presumed to be trade secrets and personal information for a period of ten (10) days from the date on which the Tribe is given notice of the records that have been removed from the Facility. At the expiration of the 10-day period, records that have not been so designated by the Tribe shall no longer enjoy a presumed status as trade secrets or personal information.

8.3.3 The State may dispute the Tribe's designation of "TRADE SECRET" or "PERSONAL INFORMATION" pursuant to binding arbitration conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association in accordance with the procedures set forth in subsection 17.2.10.2 to 17.2.10.5.

8.3.4 Where any record is designated "PERSONAL INFORMATION," the State shall not voluntarily disclose the record except as permitted by the Information Practices Act of 1977, California Civil Code section 1798 *et seq.*

8.3.5 Where any record is designated "TRADE SECRET," the State shall not voluntarily disclose such record to any Person who is not an

employee or official of the federal, state or local government, acting in his or her official capacity, or is not a consultant, accountant, or auditor performing services under contract with the State, unless required by court order or by subpoena or as provided under subsection 8.3.8. The State may only disclose designated records to an accountant, auditor or other consultant whom the State has retained if it advises the accountant, auditor, or consultant in writing that such information is confidential and obtains a written agreement from that Person that the confidentiality of the records will be maintained.

8.3.6 Disclosure of any record by the Tribe to the State or a representative of the State pursuant to this Compact shall not constitute a waiver by the Tribe of any privilege that the Tribe is entitled to claim under sections 1060 or 1061 of the California Evidence Code.

8.3.7 Where disclosure of designated records that the State may not voluntarily disclose is required by a court order or subpoena of a legislative, administrative, or judicial body, the State shall give the Tribe reasonable prior notice, or where it is not reasonably practicable to give such prior notice, the State shall request the court or other body to provide the Tribe with a reasonable opportunity to resist the order or subpoena. Nothing in this subsection shall be construed to prohibit the State from making any disclosure required by law.

8.3.8 Nothing in this Article shall be construed to prevent the State from disclosing records designated by the Tribe pursuant to subsection 8.3.1 or presumed confidential under subsection 8.3.2 in any criminal, civil, or regulatory action, or arbitral proceeding, to which the State is a party, where nondisclosure would compromise the State's ability properly or effectively to carry out its governmental

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responsibilities; provided however, that the State shall give prior notice to the Tribe of its intent to disclose such records, unless such notice is impracticable under the circumstances or would compromise the State's ability to properly or effectively carry out its governmental responsibilities. Where such records are to be filed or lodged with a judicial or administrative body, the State shall seek to file or lodge such records under seal unless the State has determined that such action would compromise its ability properly or effectively to carry out its governmental responsibilities. Before the State discloses such records to another party in any such action or proceeding (other than to the Tribe or any of its agents who had access to the records), it shall use its best efforts to obtain a stipulation for a protective order from that party, which stipulation shall prevent the party from disclosing or using the records for any purpose not related to the action or proceeding.

8.4 Breach of Confidentiality. The Tribe shall be entitled to invoke all statutory and common law remedies for breach of confidentiality of those records deemed confidential under subsections 8.3.1 through 8.3.3, inclusive, in accordance with the Compact, the Information Practices Act of 1977 (commencing with California Civil Code section 1798), and the Uniform Trade Secrets Act (commencing with California Civil Code section 3426); provided however:

A. Nothing in this Article shall be construed independently to create any right of action for monetary damages that does not otherwise exist in statute or at common law.

B. Nothing in this Article shall be construed to relieve the Tribe or any other Person of any obligation imposed by Division 3.6 (commencing with section 810) of Title 1 of the California Government Code.

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C. Nothing in this Article shall be construed as a waiver of any immunity or defense available to the State or to any state or local government entity, or to any employee or official of the State or of any state or local governmental entity, under any state law, including but not limited to, any provision of Division 3.6 (commencing with section 810) of Title 1 of the California Government Code, or any federal law.

D. Disclosure of records made confidential by this Article shall not constitute a violation of this Compact or of any duty owed to the Tribe or any Person, if disclosure is compelled by a facially valid subpoena, warrant, or court order or is authorized by this Compact.

E. Nothing in this Article shall be construed as consent by the State, or by any agent or employee of the State, to suit in federal court.

8.5 Law Enforcement Unaffected. Nothing in this Article shall affect the powers of state or local law enforcement personnel to investigate and enforce the criminal laws of the State of California.

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ARTICLE 9. LIMITATIONS ON GAMING

9.1 Purpose. Article IV, Section 19(e) of the California Constitution provides that the Legislature "has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey." The parties to this Compact intend to avoid any violation of this prohibition. Further, the State has asserted an interest in avoiding undue concentrations of electronic gaming devices in a single location and within California in light of this constitutional prohibition and the fact that no other organization in the state has such concentrations.

9.2 No Nevada- or New Jersey- Style Casinos.

9.2.1 The Tribe shall not operate or conduct, or cause to operate or conduct, any Class III Gaming in any Hotel or structure which houses a Hotel.

9.2.2 No card games, including but not limited to Class II card games, shall be played in the same room in which any non-card Class III Gaming is conducted. Any non-card Class III Gaming must be conducted in a room that is separated from the location of any card tables or card games by (a) a wall or walls that reasonably prevent any card tables or games from being discerned from the room in which non-card Class III games are conducted or vice versa, with no more than one entryway per wall, which entryway shall be no more than six (6) feet wide or as otherwise required by the applicable fire code, or (b) an area dedicated exclusively to non-gaming activities that reasonably prevents any card tables or games from being discerned from the room in which the non-card Class III games are conducted or vice versa. If the Tribe and the State subsequently agree to the conduct of simulcast wagering and provide for the regulation thereof, nothing herein shall be construed to preclude placement of authorized electronic simulcast wagering equipment in

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either the Class II or Class III Gaming areas.

9.2.3 No complimentary alcoholic beverages may be served to patrons at the Facility.

9.2.4 Gaming may not be the exclusive business activity at any Facility.

9.2.5 All payments for tickets or shares in any authorized game shall be made by cash, check, debit card, credit card or other cash equivalent, prior to the issuance of the ticket or share. This provision shall not be construed to prevent the Tribe from allowing a patron to pay in advance by one of the aforementioned methods in exchange for a voucher that can be redeemed for tickets or shares of equal face value. However, the Tribe shall not offer credit to any patron of the Facility for the purpose of participating in any authorized game, nor shall the Tribe permit any other person to do so.

9.3 Age Restriction. No persons under the age set by Business and Professions Code section 19932 (which is presently 21 years of age) may play or be present in any room in which Class III Gaming is offered in the Facility; provided that such underage persons may be escorted by a person 21 years of age or older through a room in which Class III Gaming is conducted for the sole purpose of reaching non-Class III Gaming areas of the Facility. This age restriction shall be prominently displayed on any entrance leading to the Class III Gaming area. The area in which any Class III games are located must be monitored at all times by an employee to prevent unauthorized access to, or play of, such games by persons under the age restriction. Lottery Devices which dispense tickets or shares shall have printed in a conspicuous place on them a notice that no person under the age restriction may play the game or receive a prize. Solely for purposes of verifying compliance with this provision, Department of Justice personnel who are otherwise present at the Facility pursuant to Article 7 may request

patrons suspected of violating this Section to produce identification and proof of age. Nothing herein shall be construed to diminish the jurisdiction of state and local law enforcement officers to enforce state laws as acknowledged by subsection 14.2.1.

9.4 Tribal Allocation of Lottery Devices.

9.4.1 The Viejas Band is hereby allocated one hundred ninety-nine (199) Lottery Devices. As used in this Article, "Allocation" refers to the one hundred ninety-nine (199) Lottery Devices allocated to the Viejas Band. The Allocation is subject to adjustment in accordance with the procedures set forth in Sections 9.5 and 9.7.

9.4.2 Notwithstanding the Allocation granted pursuant to subsection 9.4.1, the Tribe may obtain, in accordance with Section 9.6, Lottery Device Licenses to operate additional Lottery Devices on mutually agreeable terms from other tribes which have unused allocations of Lottery Devices, but in no event may the Viejas Band operate, or have the right to operate (including its Allocation) more Lottery Devices than the number of gaming devices in operation at its Facility on July 1, 1998, which the Tribe and the State agree was one thousand one hundred thirty-two (1,132) devices.

9.4.3 The State shall grant to other tribes which agree not to conduct Class III Gaming, or which agree not to operate their full allocation of Lottery Devices authorized under their tribal-state compacts, the right to license their unused allocation of Lottery Devices to the Viejas Band or other compacting tribes pursuant to a Lottery Device License. In this way, tribes which choose to forego Class III Gaming, or to limit the size of the Class III Gaming operations in their communities can still benefit financially from Class III Gaming. At the same time, a decision by those tribes to forego or limit their Class III Gaming operations can enable the Viejas Band to increase

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the number of Lottery Devices it can operate.

9.4.4 The Viejas Band is also authorized to license, in accordance with Section 9.6, some or all of its Allocation to other tribes with which the State compacts.

9.4.5 The State recognizes that some number of federally recognized, California tribes may choose to neither enter into a compact nor accept the right to license an allocation of Lottery Devices in accordance with subsection 9.4.3 (hereinafter referred to as "non-participating tribes"). The State further recognizes that the non-participation of such tribes may prevent the Tribe from licensing sufficient allocations in order to be permitted to operate up to the number of Lottery Devices permitted under subsection 9.4.2. Accordingly, where such non-participating tribes can be named, and the Tribe shows due diligence in seeking Lottery Device Licenses, the State agrees to act, by a negotiated addendum to this Compact, on behalf of or in the place of said non-participating tribes, so as to license any available, unused allocations to the Tribe with the objective of giving the Tribe the opportunity of operating up to the number of Lottery Devices permitted under subsection 9.4.2; provided, however, that (i) no non-participating tribe's allocation may be licensed more than once, and (ii) said license may be terminated if the non-participating tribe(s), on whose behalf the State has licensed the Tribe, either enter into a compact with the State or are granted by the State the right to license an allocation of Lottery Devices. In the event such non-participating tribe (on whose behalf the State has licensed the Tribe) enters a compact or receives the right to license an allocation of Lottery Devices, the State will substitute any available, unused allocation (of the same size) of another non-participating tribe entitled to engage in Class III Gaming

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as long as the Tribe can identify it by name.

9.5 Adjustment of Tribal Allocation.

9.5.1 If a tribal-state compact allocates to any tribe a higher number of Lottery Devices than one hundred ninety-nine (199), the Viejas Band Allocation shall be increased to that higher number on the effective date of that compact, which increase shall be memorialized in an addendum to this Compact initialed by the State and the Tribe.

9.5.2 If the State grants allocations of Lottery Devices to more than ninety-nine (99) other federally recognized tribes in California pursuant to compacts or other agreements, the State is authorized to reduce proportionately the Viejas Band's Allocation if necessary to ensure that the total number of Lottery Devices available for use by tribes in the state does not exceed nineteen thousand, nine hundred (19,900). Any proportionate reduction in the Tribe's Allocation that results in a fraction shall be rounded up to the nearest whole number, so that the total number of Lottery Devices available for use by the tribes in the State is not increased. Any reduction in the Allocation shall only become effective upon the occurrence of all of the following: (a) at least six (6) months' written notice by the State to the Tribe that a reduction will be necessary; (b) the commencement of operations under the new compact(s) which would otherwise increase the number of Lottery Devices available for use by tribes in the State beyond that permitted herein; and (c) upon at least five (5) business days' further notice to the Tribe by the State of the commencement of said operations under the new compact(s). Any reduction in the Allocation shall be memorialized in an addendum to this Compact initialed by the State and the Tribe, but a failure to memorialize the reduction shall not affect the Tribe's obligation to reduce the number of Lottery Devices if the requirements of this subsection are

otherwise satisfied.

9.5.3 On March 1, 1999, the Tribe and the State shall reconsider in good faith whether the amount of the Tribe's Allocation shall be modified; provided however, that this subsection shall not be interpreted to constitute a presumption in favor of increasing or decreasing the Allocation or requiring such an increase or decrease. Any such modification on which agreement is reached shall be set out as an Addendum to this Compact, initialed by the State and the Tribe, and shall take effect immediately.

9.6 Licenses of Tribal Allocations.

9.6.1 To effectuate the right to operate additional Lottery Devices pursuant to a Lottery Device License, and prior to operating any Lottery Device pursuant thereto, the Viejas Band shall submit to the Division a written notice that identifies the grantor tribe and the grantee tribe, states the number of Lottery Devices licensed and the expiration date of the license, and is signed by authorized representatives of both the grantor tribe and the grantee tribe. In the event of any dispute over the number of Lottery Devices which the Viejas Band is authorized to operate under this Compact, the text of this Compact and the number reflected in a properly signed and completed written notice shall control. Any operation of Lottery Devices that exceeds such authorized numbers or the Lottery Device maximum permitted under section 9.4.2, whichever is less, shall constitute a violation of the Compact and be subject to an injunction pursuant to the procedures in Article 17. Any dispute over whether one or more Lottery Devices have been licensed to or by the Viejas Band may also be submitted to arbitration pursuant to the procedures under subsection 17.2.10, but said arbitration shall not prevent the State from seeking an injunction pursuant to the procedures in Article 17.

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9.6.2 Until March 1, 2001, a grantee tribe shall not pay consideration in excess of, and a grantor tribe shall not receive consideration in excess of, five thousand dollars ($5,000) per Lottery Device per year with respect to any Lottery Device License. At least six (6) months before the expiration of this ceiling, at the request of either party to this Compact, the State and the Tribe shall negotiate in good faith over whether a new ceiling should be imposed, and if so, the amount of that ceiling.

9.6.3 The Tribe may not act as a broker on behalf of another tribe in connection with a Lottery Device License. The Tribe may also not employ or contract with any Person to act as an agent in connection with a Lottery Device License if that Person is granted a commission, share, or other financial interest in the license, or in the value of, or the proceeds generated by, that license. Any Lottery Device License which is granted or received in violation of this subsection is null and void.

9.6.4 The Tribe may not assign or otherwise transfer (a) its right to license its Allocation or any portion thereof, or (b) any Lottery Device License, in whole or in part, to any Person except to a Tribe with which the State has a Compact.

9.6.5 Nothing in subsections 9.6.3 and 9.6.4 shall preclude the Viejas Band in association with other California tribes from establishing an organization through which unused allocations of Lottery Devices authorized by the State may be licensed to other California tribes, including to the Viejas Band, so long as no antitrust laws are violated in connection therewith.

9.6.6 After the execution date of this agreement, the State shall advise tribes to whom it grants licenses pursuant to subsection 9.4.3 that they should consider including provisions in their Lottery Device

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License providing for payment of license fees on a quarterly basis and for the automatic termination of the Lottery Device License if payment is not made within 30 days of the end of each quarter.

9.7 Economic Development Zones.

9.7.1 The parties acknowledge that the purpose of IGRA is to promote tribal economic development, tribal self-sufficiency, and strong tribal government through the generation of revenues. They further acknowledge that revenues generated from non-gaming businesses can also achieve these objectives.

9.7.2 If the State enacts legislation authorizing economic development zones which are applicable to all or part of Indian lands, the annual Net Income generated to the Viejas Band, or any tribal corporation or other business entity controlled by the Tribe, after the date such Economic Development Zone is established on the Reservation, by reason of any private investments that benefit in whole or in part from the Economic Development Zone on the Viejas Reservation shall reduce the number of Lottery Devices operated at the Facility for the following calendar year by the number of Lottery Devices representing fifty percent (50%) of the Net Income generated by the private investment; provided that no such reduction shall be required unless Net Income from the investment in the Economic Development Zone exceeds twenty-five percent (25%) of the annual Net Income generated by the Lottery Devices operated at the Facility during the previous calendar year. The parties to this Compact recognize that some private investments may choose not to take advantage of any of the benefits offered by an Economic Development Zone, and accordingly, this subsection should be construed to trigger the reductions in Lottery Devices only if the private investment benefits in whole or in part from the Economic

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Development Zone and the other provisions of this subsection are satisfied.

9.7.3 For purposes of this Section, the following formulae apply:

9.7.3.1 The amount of annual Net Income generated by a Lottery Device will be based on the annual Net Income of all Lottery Devices operated at the Facility, divided by the average daily number of Lottery Devices operating at the Facility during that year. This shall be referred to as the "average annual per-device net income."

9.7.3.2 The number of Lottery Devices representing the Net Income generated by the private investment shall be that number of Lottery Devices which, when multiplied by the average annual per-device net income for the previous calendar year, equals or most nearly equals the amount of the Net Income generated to the Tribe, or any Person or entity controlled by the Tribe, from any private investment in the Economic Development Zone for the previous calendar year. If fifty percent (50%) of the Net Income generated from the private investment equals the annual average Net Income generated by a specified number of Lottery Devices plus a fraction, the Tribe need only base its reduction on the number of Lottery Devices whose Net Income is fully substituted by fifty percent (50%) of the Net Income from the private investment.

9.7.3.3 The calculation of the reduction in Lottery Devices shall be done on an annual basis. Each calendar year, the reduction, if any, of the Lottery Devices shall be

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subtracted from the Tribe's Allocation. For example, if the amount of the reduction is determined to be five (5) Lottery Devices, the Tribe's Allocation would be reduced from one hundred ninety-nine (199) to one hundred ninety-four (194). In the next calendar year, the amount of any reduction would once again be subtracted from the Allocation of one hundred ninety-nine (199). If, for any calendar year, the calculated reduction in Lottery Devices exceeds the Allocation, the Tribe shall not use any of its Allocation for that year and shall reduce the number of additional Lottery Devices operated at the Facility in order to achieve the full reduction required by subsection 9.7.2.

9.7.4 On May 1 of each calendar year, the Tribe shall give notice to the Division of the number of Lottery Devices which the Tribe is reducing and its calculations upon which the reduction was derived. The parties shall thereafter memorialize the reduction of Lottery Devices by a written addendum to the Compact initialed by both parties, but a failure to enter into the addendum shall not affect the Tribe's obligation to reduce the number of Lottery Devices being operated at the Facility. Any dispute over the number of Lottery Devices to be reduced shall be settled by arbitration pursuant to subsection 17.2.10.

9.7.5 If this Section requires a reduction in the number of Lottery Devices, the reduction shall take effect on June 1 of the calendar year following the calendar year in which the Net Income from the private investment was generated, and said reduction shall continue in effect until May 31 of the succeeding calendar year.

9.8 <u>Judicial Construction of the Casino Prohibition</u>.

9.8.1 If, after the effective date of this Compact, the California Legislature enacts a statute pursuant to Article IV, Section 19(e) of the California Constitution, the parties shall be bound by that statute upon its effective date, so long as its operation has not been enjoined by an appellate court, or by a court before which the Tribe or the State is a party, where the other party had an opportunity to intervene.

9.8.2 If, after the effective date of this Compact, a final decision of the United States Supreme Court, California Supreme Court, the Ninth Circuit Court of Appeals, or any California Court of Appeal construes the California Constitution's prohibition under Article IV, Section 19(e) of casinos of "the type currently operating in Nevada and New Jersey," or a statute implementing that constitutional provision, or determines the applicability of that constitutional provision or statute to tribal-state compacts, the parties shall be bound by that interpretation as soon as the decision becomes final, provided that the Tribe and the State have had an opportunity to intervene. Except where the Tribe is a party to a contrary binding decision, conflicts between the decisions of these courts shall be treated as follows:

9.8.2.1 In the event of a conflict between a decision of the Ninth Circuit Court of Appeals and the California Supreme Court, the decision of the California Supreme Court concerning the interpretation of the California constitutional prohibition or statute shall prevail.

9.8.2.2 In the event of a conflict between a decision of the Ninth Circuit Court of Appeals and any California Court of Appeal, the decision of the California Court of Appeal concerning the interpretation of the California constitutional prohibition or statute shall prevail.

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9.8.2.3 In the event of a conflict between decisions of the California Courts of Appeal, only the decision, if any, of the Court of Appeal for the Fourth Appellate District concerning the interpretation of the California constitutional prohibition or statute shall apply unless and until the conflict is resolved by the United States or California Supreme Court.

9.8.2.4 In the event of a conflict between the Ninth Circuit Court of Appeals and any California appellate court concerning the applicability of the state constitutional prohibition or statute to tribal-state compacts under IGRA, in a case in which the State has had an opportunity to intervene, the decision of the Ninth Circuit shall prevail, except that in such a case the parties shall not be bound by any Ninth Circuit interpretation of State law.

9.8.3 Nothing in this Section shall be construed to prevent any party to this Compact from bringing any action in a court or tribunal of competent jurisdiction to determine the construction or application of any constitutional provision or statute affecting this Compact, but neither shall anything in this Section be construed as a waiver of sovereign immunity in any such action.

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ARTICLE 10. PATRON DISPUTES

10.1 Whenever the Tribe or its agents refuse payment to a patron of alleged winnings from any Class III Gaming, the patron shall be (a) advised of his or her right to request, within thirty (30) days of the date of the refusal, resolution by the Tribal Gaming Agency, and if dissatisfied with the proposed resolution, to seek binding arbitration of the dispute; and (b) given a copy of Sections 10.2 and 10.3 of this Article and subsection 17.2.10.5 of this Compact.

10.2 Upon request by a patron, the Tribal Gaming Agency shall conduct an appropriate investigation and shall render a decision whether payment of the alleged winnings should be made. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.

10.3 If the patron is dissatisfied with the decision of the Tribal Gaming Agency or no decision is issued within the sixty (60) day period specified in Section 10.2, the patron may request that the dispute be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in Los Angeles, and upon such request, the Tribe shall consent to such arbitration in accordance with the provisions of subsection 17.2.10.5. If the alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure that is not due to the intentional acts or gross negligence of the Tribe or its agents, the arbitrator shall deny the patron's claim for the winnings, but shall award reimbursement of the amounts wagered by the patron which were lost as a result of any said failure.

ARTICLE 11. LIABILITY TO THIRD PARTIES AND INSURANCE

11.1 Insurance Requirements. Prior to the commencement of Class III Gaming operations, the Tribe shall obtain and maintain during the term of this Compact public liability insurance which provides coverage of no less than five million dollars ($5,000,000) per occurrence for personal injury and property damage arising out of or relating to the operation of the Facility.

11.2 Scope of Tribal Sovereign Immunity.

11.2.1 The Tribe does not waive its sovereign immunity in connection with any claim for: (a) negligent injury to Persons or property arising out of or relating to the operation of the Facility, except as provided in subsection 11.2.2; or (b) damages based on an intentional tort committed by an employee or other authorized agent of the Tribe arising out of or relating to the operation of the Facility except as provided in subsection 11.2.3.

11.2.2 The Tribe shall not invoke sovereign immunity up to the limits of the insurance policy referred to in Section 11.1 in connection with any claim for negligent injury to persons or property, or any judgment resulting therefrom, arising out of or relating to the operation of the Facility, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Facility or providing goods or services to the Facility. (Entry onto the Tribe's land for purposes of patronizing the Facility or providing goods and services to the Facility shall be evidenced by having exited Willows Road and having proceeded toward the Facility or by having exited the Facility.) The Tribe's insurance policy shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the policy referred to in Section 11.1.

11.2.3 Where the Tribe (a) had advance knowledge of the unfitness of an

employee or authorized agent who is alleged to have committed an intentional tort and employed or engaged said employee or agent with a conscious disregard of the rights and safety of others, or (b) authorized or ratified the wrongful conduct for which damages are awarded, the Tribe waives its sovereign immunity in connection with such a claim arising out of the employee's or agent's actions, or any judgment resulting therefrom, with respect to compensatory damages only, up to five million dollars ($5,000,000).

11.3 Liability of Employees and Agents. No employee or authorized agent of the Tribe may invoke, and the Tribe shall not invoke on behalf of the employee or agent, the Tribe's sovereign immunity in connection with any claim for, or any judgment based on any claim for: (a) negligent injury to persons or property arising out of or relating to the operation of the Facility, or (b) damages based on a physical injury resulting from an intentional tort committed by the employee or authorized agent arising out of or relating to the operation of the Facility. Nothing in this Section 11.3, however, shall be construed as an admission or concession by the State that any employee or agent of the Tribe has the right to invoke the Tribe's sovereign immunity or as a limitation on the Tribe's right to invoke its sovereign immunity on its own behalf.

11.4 Liability of Independent Contractors. Notwithstanding anything in this Article to the contrary, any independent contractor which has been retained in whole or part in connection with the Facility shall not be entitled to invoke, and the Tribe shall not invoke on behalf of the independent contractor, the Tribe's sovereign immunity in any actions against said independent contractor. Nothing in this Section 11.4 shall be deemed to limit the Tribe's invocation of its sovereign immunity on its own behalf.

11.5 Tribe's Cooperation in Enforcement of Judgments Against Employees or Agents of the Facility. As a matter of comity, upon receipt of a written

request for enforcement from a Person who has obtained a judgment against an employee or authorized agent as permitted under this Article, the Tribe shall honor requests for garnishing any wages or attaching any other assets of the employee or authorized agent of the Facility. Any person who has obtained such a judgment from a state or federal court against an employee or authorized agent of the Facility, may submit to the Tribe an Application for Acknowledgment of Judgment on a form the Tribe shall make available upon request, together with a $25 processing fee, a copy of the applicable state or federal judgment, and any order to enforce the judgment. Upon receipt of the application form, processing fee, judgment, and any order, the Tribe will notify the employee or agent of the judgment and shall honor the request for garnishment or attachment pursuant to the judgment, except where the employee or authorized agent is not the judgment debtor.

11.6 Choice of Law. California tort law shall govern all claims of intentional or negligent injury to Persons or their property arising out of or relating to the operation of the Facility, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Facility or providing goods or services to the Facility. Nothing in this Section shall be construed to waive the Tribe's sovereign immunity except as authorized by this Article.

11.7 Coverage of Claims of Employees. In light of the workers' compensation remedy afforded under Article 13, this Article shall not cover injury to employees of the Tribe at the Facility in their capacity as employees except for physical injury to their property.

11.8 Coverage of Claim by Tribal Members. The Tribe may adopt an ordinance providing that this Article, in whole or in part, does not cover claims by members of the Tribe.

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ARTICLE 12. PUBLIC HEALTH AND SAFETY

12.1 The Tribe shall conduct its Class III Gaming in a manner that, and shall conduct such gaming in a Facility that is constructed and maintained in a manner that, adequately protects the public health and safety of patrons, employees, and the public generally.

12.2 The Tribe agrees to conduct its Class III Gaming operation in conformity with regulations that are adopted by the State Gambling Control Agency and are applicable to Off-Reservation Gaming Establishments, unless those regulations conflict with an express provision of this Compact or are not related to law enforcement considerations; provided however, that no local ordinance shall be deemed to apply to the Tribe's Class III Gaming operations unless agreed to in the County Participation Agreement. In adopting regulations relating to law enforcement considerations, the State Gambling Control Agency shall give due consideration to the impact on, or applicability of those regulations to, tribal gaming operations, if the Tribe submits written comments concerning the impact or applicability of the regulations during the comment period prior to the adoption of said regulations.

12.3 Fire Safety and Suppression.

12.3.1 The Tribe shall take all necessary steps to (a) reasonably ensure on-going availability of sufficient and qualified fire suppression services to the Facility, and (b) reasonably ensure that the Facility satisfies all fire-safety and life-safety codes, regulations, and ordinances applicable to similar facilities in San Diego County.

12.3.2 Not later than thirty (30) days before the commencement of Class III Gaming activities under this Compact, and not less than biennially thereafter, and upon at least five (5) days' notice to the Division, the Facility in which Class III Gaming is conducted shall be inspected, at the Tribe's expense, by a tribal official, if any, who is responsible

for fire protection on the Reservation, or by an independent expert. The official or independent expert shall issue a report on the assessment within fifteen (15) days, identifying any deficiencies in fire safety at the Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Facility. The official or independent expert shall propose adoption of a specific plan for correcting deficiencies, whether in fire safety at the Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Facility. A copy of the report shall be served on the Division upon delivery of the report to the Tribe.

12.3.3 The State shall be entitled to have a qualified representative present during the inspection described in subsection 12.3.2. During such inspection, the State's representative shall report to the tribal official or independent expert, as the case may be, any condition(s) which the representative reasonably believes would preclude certification of the Facility as meeting a reasonable standard of fire safety. Prior to certifying that the Facility meets a reasonable standard of fire safety, the tribal official or independent expert shall inform the State's representative of the corrective steps, if any, that will be taken in response to such report(s).

12.3.4 Prior to the conduct of Class III Gaming under this Compact, or within such period of time as is agreeable to the Division, which agreement shall not be unreasonably withheld, the Tribe's official or independent expert shall certify in writing to the State that all deficiencies identified in the report described in subsection 12.3.2 have been corrected.

12.3.5 The Tribe may satisfy the requirements of subsection 12.3.1(a) either by contract or other arrangement with federal, state, or local governmental entities for provision of fire suppression services; by

utilization of fire suppression personnel and equipment maintained by the Tribe; or by any combination thereof. Upon request of the State, the Tribe shall provide a copy of current contracts and other appropriate documents, including letters, identifying the provider or providers of fire suppression services and describing the services to be provided.

12.4 Emergency Medical Response Services.

12.4.1 The Tribe shall take all necessary steps to reasonably ensure availability of sufficient and qualified emergency medical response services to the Facility in the event of disaster. As used in the Section, the term "disaster" includes fire, earthquake, or other natural or man-made event that might reasonably be expected to occur and involve the Facility, and that, if it occurred, might reasonably be expected to cause catastrophic loss of life or injury.

12.4.2 Not later than thirty (30) days before the commencement of Class III Gaming under this Compact, and not less than biennially thereafter, the Tribe shall submit to the Division a copy of the current plan, certified and adopted by the Tribe as described herein, for meeting the reasonably expected emergency medical response needs of the Facility in the event of a disaster.

12.4.3 Biennially, or upon reasonable request by the State, the Tribe shall conduct an assessment of the need for emergency medical response services at the Facility for any purpose, including in the event of disaster. Such an assessment shall be at the Tribe's expense and shall be conducted by the tribal official responsible for emergency medical services, if any, or by an independent safety examiner having no financial interest in the Tribe's gaming operations. The official or independent examiner shall prepare a written report detailing the reasonably expected emergency medical response needs

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of the Facility and explaining how those needs would be met. The official or independent examiner shall propose adoption of a specific plan for meeting those needs and shall certify that the plan has been adopted by the Tribe. A copy of the report and of such certified adopted plan shall be provided to the Division not later than thirty (30) days after the certification or one hundred twenty (120) days after receipt of the State's request for the conduct of the assessment, whichever is later. Where the State requests an assessment of the need for emergency medical response services more frequently than biennially, the request shall be reasonable and set forth those facts which justify the State's request for a more frequent assessment.

12.4.4 The Tribe may satisfy the requirements of this Section either by contracting with one or more private providers of emergency medical response services, by agreement with federal or local governmental providers of such services, by utilization of emergency medical response personnel and equipment maintained by the Tribe, or by any combination thereof. Upon request of the State, the Tribe shall provide a copy of current contracts and other appropriate documents, including letters, identifying the provider or providers of emergency medical response services and describing the services to be provided.

12.5 Security Services.

12.5.1 The Tribe shall employ or otherwise provide for an adequate security force at the Facility to reasonably secure from theft, injury, or threat thereof, the person and property of patrons, contractors, licensees, and other persons entering upon the Facility.

12.5.2 Not later than thirty (30) days before the commencement of Class III Gaming under this Compact, and not less than biennially, and upon notice to the State, the Tribe shall conduct an assessment of the need for security services resulting from the conduct of Class III Gaming

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pursuant to this Compact. Such an assessment shall be at the Tribe's expense and shall be conducted by the Tribe's chief security officer or an independent security examiner having no financial interest in the Tribe's gaming operations. The official or independent examiner shall prepare a written report detailing the security needs presented by the Class III Gaming activities and describing how they are or will be met, including use of security services from agencies within the county in which the Tribe's Reservation is located, and shall submit said report to the Division for its approval, which shall not be unreasonably withheld. Prior to the commencement of Class III Gaming by the Tribe, the Division must approve the report, and the official or independent examiner shall certify that the security needs identified in the report have been met, a copy of which certification shall be provided to the Division, along with any security service contract or contracts entered into by the Tribe for the purpose of implementing its plan. If, however, the Division has not approved the report within thirty (30) days of receipt of the report, the Tribe may commence, or in the case of biennial assessments, continue Class III Gaming, as long as the certification has previously been provided to the Division. At such time that the Division has disapproved of the report, the Tribe shall implement those recommendations of the Division necessary to gain its approval, or within thirty (30) days of the service of notice of disapproval, shall seek arbitration pursuant to Section 17.3 as to whether the approval was unreasonably withheld.

12.6 Improvements to State Highways. The Tribe shall pay for all improvements to enhance access to or from state highways, as defined in California Streets and Highways Code section 24, that are necessitated by the operation of the Facility, including traffic control signals, in accordance with standards of the

California Department of Transportation. To effectuate this agreement, the Tribe shall enter into agreements with the California Department of Transportation. The State shall cooperate with the Tribe in providing, at the Tribe's expense, such signage as is reasonable and appropriate in order to permit members of the traveling public to locate the Reservation from the major road approaches.

12.7 Compliance with this Article. Disputes between the Tribe and the State concerning the adequacy of the Tribe's satisfaction of the obligations described in this Article shall be resolved in accordance with Article 17. Notwithstanding anything to the contrary in this Compact, it shall be a violation of this Compact for the Tribe to deny access to fire, safety, or security inspectors authorized by the State to such records, credentials, licenses, certifications, personnel, premises, or equipment as is reasonably necessary to ensure compliance with the provisions of this Article, provided that said fire, safety or security inspectors have given reasonable advance notice.

12.8 Confidentiality. The reports and certificates provided in this Article shall be subject to the provisions in Article 8.

ARTICLE 13. EMPLOYEE PROTECTION

13.1 Workers' Compensation.

13.1.1 With respect to the employees employed in the Facility and/or the Hotel, the Tribe agrees as follows:

13.1.1.1 The Tribe shall comply with and be subject to the workers' compensation laws of the State of California. These laws include, but are not limited to, laws relating to the securing of payment of compensation under Labor Code sections 3700 - 3760 through one or more insurers duly authorized to write workers' compensation insurance in this state or through self-insurance as permitted under the State's workers' compensation laws.

13.1.1.2 All disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board in accordance with Labor Code sections 5300 - 6002. The Tribe hereby consents to the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement.

13.1.2 When the Tribe or its agents enter into a contract with a person or entity that is not a member or entity of the Tribe for the performance of any services at the Facility and/or the Hotel, the contract shall specify that said Person or entity shall comply with and be subject to the workers' compensation laws of the State of California, including the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement.

13.1.3 Notwithstanding Section 13.1.1, the Tribe, or its agents, or their insurance carriers, are free to assert before the Workers'

Compensation Appeals Board, and thereafter in the courts on any appeal therefrom, as an additional and separate jurisdictional defense to any employee claim, that the employee was not employed in the Facility or Hotel.

13.1.4 Nothing in this Section shall be construed as an admission by the Tribe that, in the absence of this Compact, the workers' compensation laws would otherwise be applicable to the Reservation under Public Law 280, nor as an admission by the State that, but for this Compact, they would not otherwise be applicable.

13.2 Occupational Safety and Health.

13.2.1 Except as provided in subsection 13.2.2, with respect to the employees employed in the Facility and/or the Hotel, the Tribe acknowledges that it is subject to and will comply with the provisions of the federal Occupational Safety & Health Act of 1970, as amended, 29 U.S.C. section 651 *et seq.*

13.2.2 If a final decision of the United States Supreme Court or the United States Court of Appeals for the Ninth Circuit holds that the federal Occupational Safety & Health Act does not apply to Indian tribes, or if federal law should otherwise exempt Indian tribes from its application, then the Tribe agrees to comply with and be subject to the provisions of the Occupational Safety and Health Act of the State of California, commencing with California Labor Code section 6300, and consents to the jurisdiction of the state agencies charged with the enforcement of those laws, including the Occupational Safety and Health Standards Board and Occupational Safety and Health Appeals Board, and of the courts of the State of California for purposes of enforcement.

13.2.3 The Tribe agrees to be subject to and comply with, and consents to the jurisdiction of the state agencies and courts of the State of

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California charged with the enforcement of:

A. Parts 7 and 10 of Division 5 of the California Labor Code regarding Volatile Flammable Liquids and Use of Carcinogens, unless the application of such provisions is preempted by the federal Occupational Safety & Health Act; and

B. Articles 3 (commencing at section 2350) and 5 (commencing at section 2440) of Chapter 1 of Part 9 of Division 2 of the California Labor Code regarding certain sanitary and health conditions at business establishments, unless the application of such provision is preempted by the federal Occupational Safety & Health Act.

13.3 Unemployment and Disability Compensation Benefits. The Tribe agrees to participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed by the Tribe at the Facility and/or the Hotel. To effectuate the foregoing, the Tribe shall comply with and be subject to the provisions of the California Unemployment Insurance Code, and consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

13.4 Withholding and Payment of Tax for Non-Members. As a matter of comity, with respect to Persons employed at the Facility and/or the Hotel, other than members of the Tribe, the Tribe shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and Revenue and Taxation Code, and shall forward such amounts as provided in said Codes to the State.

13.5 Compensation and Working Hours. Except to the extent preempted by the federal Fair Labor Standards Act, as amended, 29 U.S.C. section 201 *et seq.*

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(to which the Tribe acknowledges it is subject), or inconsistent with any provisions therein, with respect to employees employed at the Facility and/or the Hotel, the Tribe agrees to comply with and be subject to the provisions of Parts 1 and 2 of Division 2 of the California Labor Code and consents to the jurisdiction of the state agencies charged with enforcement of those parts and of the courts of the State of California for purposes of enforcement, to the same extent that public employers, including the State, are required to do so with respect to their employees.

13.6 Application of Other Statutes.

13.6.1 The failure to expressly specify the application of any other state statute or regulation governing employment, health, or safety shall not be deemed an admission by the State that said statute or regulation does not otherwise apply to the Tribe, the Facility, and/or the Hotel. Nothing in this Article shall be construed to affect the applicability or enforceability under Public Law 280 of any state law that is not expressly made applicable herein.

13.6.2 If the State contends that the Tribe is not complying with a federal or state statute or regulation governing the employment, health, or safety of the employees associated with the Class III Gaming enterprise that the State claims applies to the Tribe, the Facility, and/or the Hotel, the State shall serve a written notice on the Tribe identifying the statute or regulation and requesting the Tribe to comply. If, within thirty (30) days of service of the State's notice, the Tribe does not agree in writing to comply with the statute or regulation, the State may bring suit over the Tribe's failure to comply, and the Tribe consents to the jurisdiction of the court in connection with such a suit. The Tribe agrees to abide by any statute or regulation which is held to be applicable to Indian tribes in

California pursuant to a final judgment from which no further review can be obtained, whether the judgment is against the Viejas Band or any other tribe; provided however, that if the judgment is against another tribe, the State must have given the Viejas Band written notice of the suit in sufficient time to provide the Tribe with a reasonable opportunity to intervene.

13.7 Concerted Activity and Representation of Employees by Employee Organizations.

13.7.1 The Tribe's Service Employees have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The Tribe shall refrain from any interference with, restraint or coercion of Service Employees in the exercise of these rights; provided that the exclusive remedy for a violation of these obligations shall be the arbitration set forth in subsection 13.7.2.

13.7.2 The Tribe shall afford to Service Employees, or an employee organization seeking to represent them, the opportunity to settle by binding arbitration in accordance with the procedures set forth in subsection 13.7.3.G any claims, disputes or controversies arising out of any alleged violation of the rights and obligations described in subsection 13.7.1.

13.7.3 The Tribe agrees that if an employee organization offers in writing that it will not engage in strikes, picketing or other economic activity at or in relation to the Facility or Hotel, and further agrees to subsections 13.7.3.F, 13.7.3.G and 13.7.3.I, the Tribe shall enter into an agreement with the employee organization that provides for the following:

A. The Tribe shall advise Service Employees that it is neutral to their selection of an exclusive representative, if any, and shall not directly or indirectly state or imply opposition to the selection by Service Employees of an exclusive representative, if any, or preference for or opposition to any particular employee organization as an exclusive representative. Alternatively, the Tribe may seek to negotiate a different arrangement with the employee organization within thirty (30) days of the employee organization's offer under subsection 13.7.3, but if the Tribe does enter a different arrangement, it must offer that same arrangement to any other employee organization seeking to organize Service Employees which makes an offer under subsection 13.7.3, and failing its conclusion of any such different arrangement within said 30-day period, the Tribe shall enter into the agreement provided in the first sentence of this subsection (A) and subsections (B) - (I).

B. The Tribe shall allow representatives of that employee organization to have access to the Facility and Hotel, if any, to communicate orally and in writing with such Service Employees about their terms and conditions of employment or representation by the employee organization, without interference or surveillance by management, security or investigative personnel of the Facility or Hotel, if any; provided that this access may not unreasonably interfere with the normal business operations of the Facility or Hotel, if any; and provided further that there shall be no solicitation or distribution of organizing material at work stations, or other areas open to the public within the Facility or Hotel, if any;

and provided still further that such organizing activity shall not interfere with the normal work routine of the Service Employees and shall be done on non-work time in non-work areas.

C. The Tribe shall provide, upon request, to that employee organization the names, addresses, telephone numbers and work classifications or titles of all Service Employees within ten (10) working days after such request, upon such terms and conditions as the Tribe and the employee organization agree, consistent with gaming industry practice under similar agreements.

D. On or after the first anniversary date of the effective date of this Compact or of the opening date of the Facility to the public, whichever is later, the Tribe shall recognize as the exclusive representative for an appropriate unit of Service Employees, an employee organization which submits to an arbitrator, selected pursuant to subsection 13.7.3.G, written, signed and dated authorizations from a majority of the Service Employees in the unit authorizing the employee organization to serve as their representative; provided that the arbitrator shall also determine the appropriateness of the unit; and provided further that the arbitrator shall verify the authenticity of the authorizations and the majority status of the employee organization in light of the rights and agreements described in subsection 13.7.3.I.

E. Following recognition of an employee organization as provided in subsection D, the Tribe shall:

(i) Engage in an informal exchange of information and documents about terms and conditions of employment

and in non-binding problem-solving meetings about workplace concerns.

(ii) Authorize the employee organization to represent Service Employees in the enforcement of the protections provided to employees by other sections of this Article.

(iii) Upon the first anniversary of recognition, negotiate in good faith with the employee organization for a memorandum of understanding covering Service Employees represented by the employee organization on wages, hours and other terms and conditions of employment.

F. If the parties are unable to reach agreement within one hundred twenty (120) days following commencement of negotiations for a memorandum of understanding, all unresolved issues shall be submitted for resolution to mediation and then arbitration pursuant to the procedures described in subsection 13.7.3.G, and if arbitration shall be required, the arbitrator shall consider, but not be limited to, the following factors:

(i) Wages, hours and other terms and conditions of employment of the Tribe's competitors, a list of which shall be mutually agreed upon by the employee organization and the Tribe;

(ii) Size and type of the Tribe's operations at the Facility and Hotel, if any;

(iii) The Tribe's financial capacity (if the Tribe places this in issue);

(iv) Cost of living as it affects the Service Employees and

measured pursuant to an agreed upon index;

(v) Regional and local market conditions; and

(vi) Cost increases at the Facility.

G. The Tribe and the employee organization shall submit to final and binding arbitration any and all questions or disputes arising under subsection 13.7.3 or any memorandum of understanding. The arbitrator shall be selected by the alternate striking of names from a list of five arbitrators, who are residents of California and members of the National Academy of Arbitrators, supplied by the Federal Mediation and Conciliation Service. The party submitting the matter to arbitration may strike any name from the list first and each party is entitled to strike no more than two (2) names. Any decision, award or order by the arbitrator shall be enforceable in the United States District Court for the Southern District of California, or if that court has no subject matter jurisdiction, the Superior Court for the County of San Diego, with all parties to the arbitration sharing equally in the fees and expenses of the arbitrator, but bearing their own fees and expenses for their own representation. The arbitrator shall have the right and power to determine and order all questions of procedure and to frame all issues on matters submitted for arbitration.

H. Where an arbitrator determines that the Tribe has materially violated subsections 13.7.3.A, B or C, the arbitrator may order as a remedy that the effective dates for the Tribe's obligation under subsections 13.7.3.D and E(iii) shall take effect immediately.

I. Service Employees have the right to refrain from any and all

activities described in subsection 13.7.1, and an employee organization seeking an agreement with the Tribe pursuant to subsection 13.7.3 agrees not to restrain or coerce Service Employees in the exercise of the rights described in this subsection.

13.7.4 The Tribe shall fully comply with all laws of the State of California concerning the collection and deduction of dues and fees paid by Service Employees to employee organizations which are used in whole or in part as contributions or expenditures within the meaning of the Political Reform Act of 1974, as amended, California Government Code section 81000 *et seq.*, and the Tribe consents, for that purpose only, to the jurisdiction of the State agency charged with the enforcement of said laws.

13.7.5 The policies stated in California Labor Code sections 921 and 923 shall govern in any proceeding concerning the enforcement or construction of any agreement between the Tribe and any employee or prospective employee, between the Tribe and any employee organization, or between any employee or prospective employee of the Tribe and any employee organization.

13.7.6 The Tribe shall not, and need not, recognize concurrently more than one employee organization as the representative of the same unit of Service Employees, and nothing in subsection 13.7.3 shall be construed to require or allow such multiple recognition.

13.8 Consent to Jurisdiction. Wherever in this Article the Tribe consents to arbitration, to the jurisdiction of the courts of the United States or the State of California, or to the jurisdiction of one or more federal or state agencies, the consent shall be construed to include a waiver of the Tribe's sovereign immunity with respect to the jurisdiction of the court, arbitrator or agency, and the enforcement of decisions or judgments resulting from the exercise

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thereof.

ARTICLE 14. SCOPE OF STATE CRIMINAL JURISDICTION

14.1 State Gambling Laws.

14.1.1 Purpose. The Tribe and the State acknowledge that they have a mutual interest in maintaining a crime-free environment at the Facility and elsewhere on the Reservation by prohibiting gaming activities not authorized by this Compact. To achieve that goal, the State shall have jurisdiction to enforce state gambling laws as provided in this Article.

14.1.2 Application of State Gambling Laws. Except as expressly provided in this Compact, all laws of the State of California pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to, all laws within Chapter 9 (commencing with section 319) and Chapter 10 (commencing with section 330) of Title 9 of Part 1 of the California Penal Code, are applicable everywhere on the Reservation in the same manner and to the same extent as such laws apply elsewhere in the State; provided however, that section 326.5 of the California Penal Code, and Chapter 9 (commencing with section 319) of Title 9 of Part 1 of the California Penal Code do not apply to the Tribe's gambling activities conducted in the Facility.

14.1.3 Class III Gaming Activities Outside the Facility. For purposes of 18 U.S.C. section 1166(d), the State, including local law enforcement agencies, shall have criminal enforcement jurisdiction over any Class III Gaming activity that occurs outside the Facility, if said activity is prohibited by Chapter 9 (commencing with section 319) or Chapter 10 (commencing with section 330) of the California Penal Code, in the same manner and to the same extent as the State has such jurisdiction elsewhere in the State.

14.1.4 Class III Gaming Activities Occurring Within the Facility.

A. Except as requested by the Tribe, the provisions of Chapter 9

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(commencing with section 319) and Chapter 10 (commencing with section 330) of Title 9 of Part 1 of the California Penal Code shall not be enforced by state or local law enforcement officers in respect to any Class III Gaming activity that takes place within the Facility. Activities taking place within the gaming Facility that are alleged to violate any provision of Chapter 9 (commencing with section 319) or Chapter 10 (commencing with section 330) of Title 9 of Part 1 of the California Penal Code shall be deemed to be an alleged violation of the provisions of this Compact and shall be subject solely to the dispute resolution provisions set out in Article 17 of this Compact.

B. A tribal request for enforcement pursuant to subsection 14.1.4.A shall not, in and of itself, constitute evidence of a violation of Section 3.5.

14.2 Other State Criminal Laws.

14.2.1 Except as expressly provided otherwise, nothing in this Compact shall be construed to increase, diminish, or otherwise affect the jurisdiction of state and local law enforcement officials to enforce state criminal laws on the Reservation in the same manner and to the same extent that such laws may be enforced elsewhere in California.

14.2.2 Prior to entering the Facility for the purpose of investigating or enforcing state criminal laws, state and local law enforcement officers shall notify the Tribe's public safety or security director, if any, and shall coordinate and cooperate with appropriate tribal officers, except when, in the good faith and reasonable judgment of such state or local law enforcement officers, the safety of law enforcement personnel or of patrons or employees, or the integrity of an investigation or enforcement action, would be materially

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compromised by doing so. The failure to give such notice or to so coordinate or cooperate shall not invalidate any arrest or criminal prosecution or give rise to any claim or cause of action by any person or entity not party to this Compact. The exclusive remedy for a failure, if any, to exercise good faith and reasonable judgment as set forth in this subsection shall be for the Tribe to bring an action against state or local law enforcement personnel and/or agencies in the Superior Court for the County of San Diego for appropriate injunctive relief to remedy alleged persistent or serious violations of the provisions of this subsection. The California Attorney General shall advise local law enforcement agencies of the provisions of this subsection; provided however, that any violation of this subsection by local law enforcement officers shall not be deemed to be a violation of the Compact by the State.

14.2.3 Nothing contained in this Section shall be interpreted to modify the restraints otherwise imposed on state and local law enforcement officers by the United States and California Constitutions.

14.2.4 It is the objective of the State that local law enforcement agencies shall respond promptly to requests by the Tribe to enforce state criminal laws on the Reservation. To ensure the provision of adequate resources to accomplish this purpose, the Sheriff of San Diego County is hereby authorized to enter into agreements with the Tribe, through the process set forth in Article 15 or otherwise, to augment law enforcement services on the Reservation and to alleviate the financial burden on San Diego County occasioned by any increased law enforcement services necessitated by the conduct of activities by the Tribe pursuant to this Compact; provided however, that the absence of such an agreement shall not relieve the Sheriff of any obligation under existing law to provide services to the

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Reservation to the same extent as services are provided elsewhere in the County.

14.2.5 Nothing herein shall be construed to affect the power of the Sheriff of San Diego County to deputize tribal police officials in accordance with subdivision (b) of section 830.6 of the California Penal Code.

ARTICLE 15. COUNTY PARTICIPATION AGREEMENT

15.1 Content of County Participation Agreement.

15.1.1 Before the commencement of Class III Gaming, the Tribe shall enter into a written agreement, approved by the Secretary of the Interior pursuant to 25 U.S.C. § 2710(d)(8), with either the San Diego County Board of Supervisors (hereinafter referred to as the "Board of Supervisors") or with the Governor, at the Governor's election, with respect to the matters set forth in subsection 15.1.2, which agreement shall be deemed to have been negotiated and executed pursuant to IGRA. This written agreement shall hereinafter be referred to as the "County Participation Agreement," and when approved as provided in 25 U.S.C. § 2710(d)(8), shall be deemed a part of this Compact upon publication of the notice required by 25 U.S.C. § 2710(d)(8)(D).

15.1.2 The County Participation Agreement shall include at least the following:

A. Enforceable provisions obliging the Tribe to mitigate any Significant Effect on the Environment outside the boundaries of the Tribe's Reservation, including but not limited to traffic effects, where such effect is attributable to a Project, unless: (i) the mitigation is infeasible as provided under California Public Resources Code section 21081(a)(3); and (ii) the Board of Supervisors or the Governor, at the Governor's election, makes the finding described in California Public Resources Code section 21081(b).

B. Provisions relating to the law enforcement services and any other public services to be provided by the local jurisdiction to the Tribe as a consequence of the Compact, including compensation to the local jurisdiction for the services

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provided.

C. Provisions relating to building and design standards, in addition to those set forth in subsection 12.3.1(b), for any Facility and Hotel (as defined in subsection 1.18) proposed to be built on the Reservation.

D. Provisions relating to the Tribe's choice of the location of the Facility, provided that nothing herein shall require the Tribe to relocate an existing Facility.

E. Provisions relating to mitigation of any effect on public health and safety attributable to activities under this Compact other than those addressed in Article 12.

F. Where it is the County which enters into the County Participation Agreement, the County's agreement to hold the advisory vote set forth in Article 16, and arrangements for making the Compact available for review by the voters; provided that said advisory vote has not already taken place

15.2 Environmental Impact Mitigation Process. Before the Board of Supervisors or the Governor, at the Governor's election, negotiates the County Participation Agreement, the Tribe shall cause to be prepared a draft environmental impact report (as that term is used in CEQA and the regulations promulgated thereunder), which is hereinafter referred to as "EIR," covering the environmental impact of the activities that are to be authorized by the Compact or that may be undertaken by the Tribe in order to facilitate activities authorized by the Compact. Said draft EIR shall provide all the information required under California Public Resources Code section 21100 and the regulations promulgated thereunder, including, but not limited to, the data and information necessary to enable the State and the County to determine (a) whether the Project may result in activities that will have a Significant Effect on the Environment outside the boundaries of the

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Tribe's Reservation, (b) how the Tribe plans to mitigate any such effect, and (c) the effectiveness of such mitigation.

15.2.1 Upon commencing the preparation of the draft EIR, the Tribe shall issue a notice of preparation to all Responsive Agencies and to all Interested Parties.

15.2.1.1 The notice shall provide the Responsive Agencies and Interested Parties with information describing the Project and its potential environmental effects sufficient to enable said agencies and parties to make a meaningful response or comment. At a minimum, the notice shall include all of the following information:

A. A description of the Project.

B. The location of the Project indicated either on an attached map (preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name) or by a street address in the case of an urbanized area.

C. The probable environmental effects of the Project.

15.2.1.2 The notice shall inform the Responsive Agencies and Interested Parties of the preparation of the draft EIR and shall inform them of the opportunity to provide comments to the Tribe and the Board of Supervisors within forty-five (45) days of the date of receipt of the notice. The Tribe shall forward copies of the notice and comments to the Board of Supervisors.

15.2.1.3 The notice shall also request the Responsive Agencies and Interested Parties to identify, in their comments, the significant environmental issues and reasonable alternatives and mitigation measures that the Tribe will

need to have explored in the draft EIR.

15.2.1.4 The notice shall be sent by Certified Mail.

15.2.1.5 The Office of Planning and Research, upon request of the Board of Supervisors or the Tribe, shall assist in identifying those state agencies that should be contacted and in circulating the notice among those state agencies.

15.2.2 Once the draft EIR has been prepared as required under CEQA, the Tribe may choose to submit thirty (30) copies of it to the Board of Supervisors for review, and the Tribe may request the Board to subject the draft EIR to its own review and analysis and to revise the draft EIR so that it reflects the independent judgment of the Board. If the Board agrees to the Tribe's request, the Board shall then be responsible for the adequacy and objectivity of the draft EIR.

15.2.3 After the Tribe, or the Board of Supervisors, acting under subsection 15.2.2, certifies the completion of a draft EIR, the Tribe shall file a copy of the completed EIR and a notice of completion with the Office of Planning and Research, the Board of Supervisors, and the Department of Justice. The notice of completion shall include all of the following information:

A. A brief description of the Project.

B. The proposed location of the Project.

C. An address where copies of the draft EIR are available.

D. Notice of a period of forty-five (45) days during which the Board of Supervisors will receive comments on the draft EIR.

15.2.4 If the Tribe has not already done so, the Tribe shall submit thirty (30) copies of the draft EIR to either the Board of Supervisors or the Governor, at the Governor's election. The recipient of the copies shall be asked to serve by Certified Mail in a timely manner public

notice of the availability of the completed draft EIR to all Responsive Agencies and Interested Parties. If the recipient declines to mail such notice, the Tribe shall do so. Public notice shall also be given by at least one of the procedures specified in subdivision (a) of section 15087 of Title 14 of the California Code of Regulations. The public notice shall also be posted in the office of the county clerk for the time allowed for the submission of comments, and shall be furnished to public library systems serving the area involved. The contents of the notice shall conform to subsection 15.2.3.

15.2.5 Where, in the judgment of the Governor or the Board of Supervisors, the draft EIR does not provide the data and information necessary to enable the Board of Supervisors and the public to determine whether the Compact may result in activities that will have a Significant Effect on the Environment outside the boundaries of the Tribe's Reservation or whether the proposed measures in Mitigation are sufficient to mitigate any Significant Effect on the Environment, the Tribe, upon request of the Board of Supervisors or the Governor, shall (a) amend the draft EIR to provide the necessary additional information, (b) repeat its compliance with the requirements under subsections 15.2.3 and 15.2.4, and (c) permit an extension of time for entering into the County Participation Agreement to allow comment on any amendments. The comment period shall be as provided in subsection 15.2.3.D.

15.2.6 During the period for comment referred to in subsection 15.2.3.D, either the Tribe or the Board of Supervisors shall hold at least one public hearing for comments.

15.2.7 The Tribe shall request the Board of Supervisors to comply with California Code of Regulations Title 14, sections 15088 through 15090, within sixty (60) days of the submission of a completed draft

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EIR, and shall grant reasonable extensions where necessary to enable the Board to comply with those sections.

15.3 Reimbursement. The Tribe shall reimburse the local government, to the extent that the State would be required to do so by Section 6 of Article XIII B of the California Constitution, for the actual cost of activities undertaken by San Diego County in fulfillment of its responsibilities under Sections 15.2 and 15.4.

15.4 Additional Projects. The Tribe agrees not to undertake, during the term of the Compact, any additional Project(s) which may have any Significant Effect on the Environment outside the boundaries of the Tribe's Reservation except pursuant to a new or amended County Participation Agreement. The requirements of subsection 15.1.2.A and Section 15.2 must also be satisfied with respect to any new or amended County Participation Agreement.

15.5 Subsequent Legislation. If, after January 1, 1998, the State enacts legislation exempting the compacting process under IGRA from compliance with CEQA on condition that a Compact include specified provisions as set forth in the legislation, the parties shall negotiate in good faith over whether conforming provisions should be incorporated into this Compact or whether existing provisions should be waived.

15.6 Arbitration.

15.6.1 If the County Participation Agreement is not entered into within thirty (30) days following the time specified in subsection 15.2.7 for certification of the EIR, any remaining disputes arising from, connected with or related to the negotiation of the County Participation Agreement shall be settled by binding arbitration, from which appeal or review is waived, upon the request of either the Tribe or the State, at its own behest or on behalf of the Board of Supervisors, pursuant to the procedures in subsection 17.2.10. The arbitrator shall be authorized to determine those provisions of the

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County Participation Agreement with respect to which agreement cannot be reached, by selecting from one of the party's proposals that proposal that best satisfies subsection 15.1.2.A, or in the case of a dispute concerning the provisions under 15.1.2.B through F, the proposal that best mitigates the effect of the Project (including cost) on the public without imposing any unreasonable expense upon the Tribe. The Board may participate as a party to the arbitration at the election of the State. If none of the respondents participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award. The claimant shall submit such evidence as the arbitrator may require for the making of the award.

15.6.2 Any disputes arising from, connected with or related to the provisions in Sections 15.2 through 15.4 may also be settled by binding arbitration upon the request of either the Tribe or the State, at its own behest, or on behalf of the Board of Supervisors, pursuant to the procedures in subsection 17.2.10. The Board of Supervisors may participate as a party to the arbitration at the election of the State.

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ARTICLE 16. ADVISORY VOTE OF THE LOCAL ELECTORATE

16.1 Purpose. In order to provide further participation by the local electorate in the compacting process and because neither the voters of San Diego County nor their representatives have authorized gaming in the unincorporated areas of San Diego County, which includes the area of San Diego County in which the Viejas Band is located, this Compact shall provide for an advisory vote of the local electorate in accordance with the provisions of this Article. The purpose of this local advisory vote is solely to provide advice to the San Diego County Board of Supervisors and the State regarding the wishes of their constituents, just as the Tribe's Tribal Council seeks advice regarding the wishes of its constituency, the Viejas General Council. Except as otherwise provided in this Compact, this local advisory vote is not intended to act as, or to be cited as a precedent for, any extension of local control or jurisdiction over the affairs of the Tribe on its Reservation, either through the San Diego County Board of Supervisors or through the voters of San Diego County. Notwithstanding anything else in this Compact, the Tribe and the County are free to enter into separate agreements outside the scope of this Compact.

16.2 Placement of Advisory Vote on Ballot. The Board of Supervisors of San Diego County is requested to place on the ballot for a vote of the electorate of San Diego County at the first general election following the execution of this Compact the following question: "**Advisory Vote Only**: Do you approve of the Compact entered into by the Viejas Band and the State of California, regulating the operation of certain forms of gaming on the Tribe's Reservation and setting standards for the protection of employees, patrons and the environment? Yes _____ No _____."

16.3 Ballot Statement. The Board of Supervisors of San Diego County is requested to cooperate with the Tribe and the State in drafting a ballot statement concerning the terms of the Compact with respect to the advisory

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vote identified in Section 16.2, and in making available a copy of the Compact for public viewing at public libraries and the county counsel's office.

16.4 Effect of Disapproval. If a majority of electors voting thereon do not approve the measure, the Tribe and the Board of Supervisors, or the Governor at the Governor's election, shall, in negotiating the County Participation Agreement, take into account the concerns of the voters as expressed in the ballot arguments, published polls and published advertising concerning the measure, to the extent the parties can determine them. In the event that the County Participation Agreement has already been entered into in accordance with Article 15, the Tribe and the Board of Supervisors, or the Governor at the Governor's election, shall renegotiate in good faith the terms of said agreement in order to take into account the above-referenced concerns of the voters to the extent the parties can determine them, and where no agreement can be reached within nine (9) months of the election, any remaining issues shall be arbitrated pursuant to the procedures set forth in subsection 15.6.1, except that the arbitrator shall select that party's proposal that best accommodates the above-referenced concerns of the voters to the extent the arbitrator can determine those concerns. During the pendency of the renegotiation, the existing County Participation Agreement shall continue to be effective and enforceable. To the extent the Governor believes the above-referenced concerns of the voters have not been or cannot be addressed in the County Participation Agreement, at the request of the Governor, the Tribe shall negotiate in good faith with the Governor over amendments to the Compact in an attempt to accommodate those concerns, provided that the parties shall not be obligated to renegotiate any provisions that would impose limitations which are not legally permissible under federal or state law.

16.5 Failure to Place Measure on Ballot. If the Board of Supervisors fails or

refuses to place the advisory vote on the ballot by reason of any request or other communication by the tribal government or its authorized agents which relate to the vote, the Compact will be deemed to have been breached, and the State shall be entitled to enjoin the operation of all Class III Gaming under this Compact until such time as the advisory vote is placed on the ballot

16.6 State's Right to Waive Advisory Vote. The Governor in his sole discretion may waive the requirement of holding an advisory vote for any reason, including but not limited to, a determination that a substantial portion of the residents of the County have already authorized gaming.

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ARTICLE 17. DISPUTE RESOLUTION AND ENFORCEMENT OF COMPACT

17.1 Policy of Cooperation. In order to facilitate communication, foster a positive working relationship, prevent disputes from arising, and provide the parties with an opportunity informally to resolve any disputes that do arise, the parties agree as follows:

17.1.1 The Division and the Tribal Gaming Agency shall meet periodically to discuss matters relating to the operation and enforcement of this Compact.

17.1.2 It shall be the general policy of the Tribe, the Tribal Gaming Agency, and the Division to promptly report to each other any activity suspected of occurring, whether within the Facility or not, which that party believes adversely affects state, tribal or public interests relating to the Facility and the operation of Class III Gaming.

17.1.3 Notwithstanding subsection 17.1.2 above, nothing herein shall be construed to require disclosure of any information by the Division if (a) the Division reasonably believes that such disclosure would put any person at risk of injury or would compromise the integrity of a law enforcement investigation; or (b) the Division has reasonable cause to believe that the Tribe or Tribal Gaming Agency is permitting or participating in a violation of the Compact.

17.2 Compact Violations by the Tribe.

17.2.1 Notice of Alleged Violations. In the event that the Division believes that the Tribe is committing, threatening to commit or is allowing to be committed any violation of any provision of this Compact, the Division shall serve by Certified Mail upon the Tribe a written notice ("violation notice"), identifying and describing each alleged violation with particularity, if available, and setting forth the action required to

remedy the alleged violation.

17.2.2 Response to Notice of Alleged Violations. Except when the State has proceeded under subsection 17.2.5, within ten (10) business days of service of a violation notice, the Tribe shall serve by Certified Mail upon the Division a written response either denying or admitting the allegation(s) set forth in the violation notice and, if the truth of the allegations is admitted, setting forth in detail the steps that the Tribe has taken and/or will take to cure the violation. Failure of the Tribe to serve its response within the time allowed therefor shall entitle the Division immediately to seek judicial relief pursuant to subsection 17.2.4.1 of this Article.

17.2.3 Meet and Confer Obligations. If, upon receipt of the Tribe's response, the Division is not satisfied either that no violation occurred or that the Tribe has taken appropriate steps to cure the violation identified in the violation notice, the Division may either:

A. Request by Certified Mail that the parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the alleged violation within thirty (30) days of the date of service of said request, or

B. Proceed immediately to seek the declaratory and injunctive relief provided in subsection 17.2.4.1 or the arbitral remedies available under subsection 17.2.4.5.

17.2.4 Judicial and Arbitral Relief.

17.2.4.1 If the Division has elected to attempt resolution by meeting and conferring pursuant to subsection 17.2.3.A above, but the Division concludes that the dispute remains unresolved at any time during the meeting and conferring, the State may bring an action against the Tribe for declaratory and injunctive relief in the United

States District Court for the Southern District of California, pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii). The parties contemplate that, if the court has jurisdiction under 25 U.S.C. § 2710(d)(7)(A)(ii), the remedy specified by that statute is available in the case of any compact violation, including, but not limited to, violations of compact provisions defining the scope of permissible gaming.

17.2.4.2 If the State initiated suit without first meeting and conferring, the State shall have the burden of demonstrating good cause for its failure or refusal to meet and confer as a precondition to the grant of injunctive relief.

17.2.4.3 In the event that the State seeks temporary injunctive relief to prevent the continued conduct of Class III Gaming in alleged violation of this Compact, no such relief may be granted unless the State gives at least twenty-four hours' notice to the Tribe of its application for such relief, which shall be deemed to provide the Tribe with an opportunity to respond in opposition to the State's application.

17.2.4.4 In the event that the United States District Court declines or has declined to exercise jurisdiction over any action brought pursuant to Article 17, the State may bring an action for declaratory and injunctive relief in the Viejas Band's Tribal Court if such court exists when the action is filed, or in the Superior Court for the County of San Diego, at the sole election and discretion of the State.

17.2.4.5 Either before any judicial action on the dispute in issue is brought pursuant to subsections 17.2.4 or 17.2.5, or after a judicial action is brought where the court declines to exercise jurisdiction, at the State's election and request, any controversy, claim, or dispute arising out of or relating to this Compact, or the breach, termination or invalidity thereof, may be settled by arbitration pursuant to the procedures in subsection 17.2.10.

17.2.5 Unauthorized Class III Gaming Activity or Other Emergency Relief. Notwithstanding anything in this Compact to the contrary, in the event that the Division alleges that the Tribe is conducting, or is threatening to engage in an unauthorized Class III Gaming activity, or in the event that the Tribe is engaging in or is threatening to engage in conduct that the State alleges seriously and imminently threatens the public health, safety, or welfare, the State shall not be required to serve a violation notice or to meet and confer, or otherwise to proceed in accordance with subsections 17.2.1 to 17.2.4 of this Article, but may, at its option, proceed immediately to seek temporary or preliminary injunctive relief in an action filed in the United States District Court pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii); provided, that the provisions of subsections 17.2.4.3 and 17.2.4.4 of this Article shall apply to any such application. However, if the State does not seek temporary injunctive relief, but only preliminary injunctive relief, the State shall not unreasonably refuse to meet and confer with the Tribe for the purpose of resolving the dispute prior to the hearing on the application for preliminary injunction. If temporary injunctive relief is denied following an application in which the State has not served a

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violation notice or has not proceeded in accordance with subsection 17.2.3, the State shall be liable to the Tribe for costs and reasonable attorney's fees for time and resources expended in defense against the application.

17.2.6 Limited Waiver of Sovereign Immunity. Solely for the limited purpose of actions brought pursuant to this Article and the enforcement of any judgment resulting therefrom, the Tribe waives its sovereign immunity and consents to suit and agrees to be bound by the judgment of the United States District Court, or, as provided in this Article, the Superior Court for the County of San Diego or the Viejas Band's Tribal Court.

17.2.7 Attorneys' Fees. In any action or arbitral proceeding brought pursuant to this Article, the prevailing party shall be awarded reasonable attorney's fees.

17.2.8 No Effect on Third Parties. Nothing in this Article shall be construed to create a defense to, or otherwise affect the availability of, any criminal or civil action by the State against any Person or entity, not a party to this Compact.

17.2.9 No Effect on State's Criminal Jurisdiction. Nothing in this Article shall be construed in any way to affect the power of state or local law enforcement officials to investigate violations of, or to enforce, state criminal laws on the Tribe's Reservation to the full extent permitted by federal law.

17.2.10 Arbitration Procedures. Where this Article or any other provision of this Compact authorizes that one or more disputes may be settled by arbitration, the arbitration shall be binding, and unless specified otherwise in this Compact, shall be conducted in accordance with the following procedures:

17.2.10.1 The arbitration shall be administered by the American

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Arbitration Association in accordance with its Commercial Arbitration Rules and the Supplementary Procedures for Large, Complex Disputes; provided however, that no claim seeking termination of the Compact or closure of the Facility under this Compact may be resolved through arbitration, unless both a federal district court and a state superior court have declined to exercise jurisdiction (for any reason) over such a claim.

17.2.10.2 The arbitration shall be held in Los Angeles, California, unless otherwise agreed. The arbitrator shall be empowered to grant compensatory, equitable, and declaratory relief. The provisions of California Code of Civil Procedure section 1283.05 are incorporated into, and made a part of this arbitration agreement; provided however, that no discovery authorized by said section may be conducted without leave of the arbitrator, who shall decide to grant leave based on the need of the requesting party and the burden of such discovery in light of the nature and complexity of the dispute.

17.2.10.3 If either party requests an oral hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.

17.2.10.4 The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The costs and expenses of

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the American Arbitration Association and the arbitrator shall be shared equally by and between the parties unless the arbitrator rules otherwise.

17.2.10.5 The Tribe and the State each waive their respective sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the other party's obligation to arbitrate, (ii) enforce, confirm, vacate, or modify an arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award.

17.3 Compact Violations by the State. Where the Tribe alleges that the State has violated any obligation it has undertaken in this Compact toward the Tribe, any such claim may be settled in accordance with the arbitration procedures set out in subsection 17.2.10; provided however, that with respect to claims for money damages:

A. Nothing in this Article shall be construed independently to create any right of action for monetary damages that does not otherwise exist in statute or at common law.

B. Nothing in this Article shall be construed to relieve the Tribe or any other Person of any obligation imposed by Division 3.6 (commencing with section 810) of Title 1 of the California Government Code.

C. Except as provided in subsection 17.2.10.5, nothing in this Article shall be construed as a waiver of any immunity or defense available to the State or to any state or local government entity, or to any employee or official of the State or of any state or local governmental entity, under any state law, including but not limited to, any provision of Division 3.6 (commencing with section 810) of Title 1 of the California Government Code, or any federal law.

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ARTICLE 18. REIMBURSEMENT FOR REGULATION

18.1 State Entitlement to Reimbursement. The Tribe shall reimburse the State for all actual and reasonable costs of activities undertaken by state agencies, officials, and employees authorized pursuant to this Compact.

18.2 Negotiation and Agreement on Terms and Conditions of Payment. The Tribe shall not commence or continue Class III Gaming unless and until the payments set forth herein have been made.

18.2.1 For the first and second calendar years in which this Compact is effective, the Tribe shall make a quarterly prepayment to the State in the amount of Fifty Thousand Dollars ($50,000.00) on or before February 15, April 1, July 1, and October 1, as long as the Compact is effective on those dates. If the Compact becomes effective after the first date of any of these quarters, the Fifty Thousand Dollar ($50,000.00) prepayment shall be prorated for that portion of the quarter during which the Compact is effective. Notwithstanding the foregoing, the Tribe's first quarterly prepayment shall be $20,000.

18.2.2 After the first calendar year, the State shall submit by Certified Mail to the Tribe by January 30 of each calendar year, a notice of the previous calendar year's actual and reasonable costs.

18.2.3 Beginning the third calendar year, the Tribe shall, on or before February 15, April 1, July 1 and October 1, make a quarterly prepayment to the State in the amount of a quarter of the previous year's actual and reasonable costs as provided in Section 18.1.

18.2.4 The State shall provide the Tribe with a quarterly accounting of all deductions from the prepayments provided in subsections 18.2.1 and 18.2.3 and shall reimburse the Tribe for any amount in excess thereof, which accounting and reimbursement, if any, shall be made within sixty (60) days of the end of the quarter.

18.2.5 Where the accounting set forth in subsection 18.2.4 shows that the

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State's actual and reasonable costs exceed the amount prepaid by the Tribe pursuant to subsections 18.2.1 or 18.2.3, the Tribe shall pay the balance owed to the State within sixty (60) days of service by Certified Mail of a deficiency notice from the State.

18.3 Failure to Make Timely Reimbursement.

18.3.1 Except with the written agreement of the Director, the Tribe shall not conduct Class III Gaming unless and until all payments have been made to the State as provided in this Article.

18.3.2 Notwithstanding anything to the contrary, if a payment provided under this Article is not timely made, interest shall accrue on the unpaid balance at the rate specified under California Code of Civil Procedure section 685.010 with respect to money judgments remaining unsatisfied.

18.3.3 Payment will be deemed timely made if such payment is placed in an envelope which is postmarked on or before the date it is due.

18.4 Arbitration of Disputes. Any disputes concerning the amount of the payment due under this Article shall be settled by arbitration pursuant to procedures under subsection 17.2.10, except for disputes concerning the Tribe's right to conduct Class III Gaming under subsections 18.2 and 18.3.1, which disputes shall be subject to the procedures under subsections 17.2.1 through 17.2.4.

ARTICLE 19. MISCELLANEOUS PROVISIONS

19.1 Agreement to Hold State Harmless. If the State or any state agency or employee is sued by any third party for any act or omission relating to any provision of the Compact, arising out of the State's negotiation, preparation or execution of this Compact, the Tribe shall reimburse the State for the defense of such action and hold the State party harmless with respect to any judgment against the State resulting therefrom.

19.2 Severability. If a material provision in Articles 2, 3, 5, 7, 13 or 17 is held invalid pursuant to a final judgment of a state or federal court, this Compact shall be void. If any other provision of this Compact is held invalid, the continuing validity of this Compact shall be determined by the applicable rules of law.

19.3 Headings. The headings of the Articles, Sections and subsections of this Compact shall not be utilized in construing their provisions and have been added solely for convenience.

19.4 Sections and Subsections. Every Article is divided into sections, which have one decimal point (*e.g.*, Section 3.2), and sections may be further divided into subsections (*e.g.*, subsection 3.2.1).

19.5 Tribal Court. Nothing in this Compact shall be construed to effect a waiver of the State's sovereign immunity to suit in Tribal Court.

19.6 Most Favored Tribe. If the State enters into a subsequent compact with any other tribe that contains more favorable provisions with respect to Articles 2, 3 and 9, this Compact shall be amended to incorporate those more favorable provisions upon request of the Tribe. In addition, any other applicable amendments or modifications that are granted hereafter to any other California tribe in a tribal-state compact approved by the Secretary of the Interior on or before December 31, 1998 will be amended into this Compact upon the Tribe's request. Except for the foregoing, if the State enters a subsequent compact which contains more favorable provisions, the State

agrees to negotiate in good faith whether such provisions should be amended into this Compact upon request by the Tribe; provided however, that in light of the fact that each negotiation can be unique and different trade-offs agreed upon, there shall be no obligation on the part of the State to necessarily incorporate such provisions as long as it acts in good faith.

19.7 Third Party Beneficiaries. Except to the extent expressly provided under this Compact, this Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

19.8 Tribe. Unless the text of a provision of this Compact specifies otherwise, the government of the Tribe is presumed to act for the Tribe and to be responsible for carrying out the Tribe's obligations under this Compact.

19.9 Amendment. This Compact may be amended pursuant to agreement of the Tribe and the State at any time during its term.

19.10 Compact Construction. Except as set forth in subsection 17.2.7, nothing in this Compact shall be construed independently to create any right of action for monetary damages. Except where expressly provided otherwise in this Compact, nothing in this Compact shall be construed to relieve the Tribe or any other Person of any obligation imposed by Division 3.6 (commencing with section 810) of Title 1 of the California Government Code. Except where expressly provided otherwise in this Compact, nothing in this Compact shall be construed as a waiver of any immunity or defense available to the State or of any state or local governmental entity, under any state law, including but not limited to, any provision of Division 3.6 (commencing with section 810) of Title 1 of the California Government Code, or any federal law. Except for Article 14 (addressing the enforcement of criminal laws on the Reservation), nothing in this Compact shall be construed to govern any business or activity conducted by the Tribe or its agents on the Viejas Reservation which is not associated with an activity arising from the

Facility, the Project, or Hotel (if any) as specifically defined in this Compact.

19.11 Notices to Tribe. Not less than fifteen (15) days after execution of this Compact, the Tribe shall provide to the Governor and to the Division the name, street and postal address, telephone number, and facsimile transmission phone number of an agent authorized to receive notices for the Tribe under this Compact. Whenever in this Compact service of a notice is required to be made on the Tribe, service of the notice on the Tribe's designated agent shall be deemed to be notice to the Tribe unless and until a different agent is designated by the Tribe, and the Governor and Division have been so informed in writing.

19.12 Notices to the State. Except where an agency or official (including the Governor) is otherwise expressly designated by the text, whenever the Tribe is required to serve notice on "the State" under this Compact, service on the Director of the Division of Gambling Control shall be deemed sufficient.

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ARTICLE 20. TRANSITION PROVISIONS

20.1 Grandfathering of 1,132 Devices. Notwithstanding Article 3, if through no fault of the Tribe, the Indian Lottery Games identified in Exhibit A of this Compact are not commercially available as of the effective date of this Compact (as specified under Section 2.1) or have not been certified in accordance with subsection 4.3.2, or the Tribe would be subjected to unfair competition through the continuation of uncompacted and State-law-prohibited gaming at neighboring tribal facilities, the State Gambling Control Agency, at the written request of the Tribe, after giving due weight to the basis for that request, shall decide in good faith whether to permit the continuation of the Tribe's current Class III Gaming devices for a specified transition period not to exceed one hundred eighty (180) days from the effective date of this Compact, and the Tribe will not be deemed to be engaged in unauthorized Class III Gaming at its Facility for the specified period, so long as (i) the Tribe has not increased the number of Class III Gaming devices operated at its Facility beyond 1132, and (ii) it has not altered the operation, nature or type of the devices.

20.2 Further Reexamination of Transition. No later than March 13, 1999, the Tribe and the State shall decide in good faith whether the one hundred eighty (180) day limit for the transition period authorized under Section 20.1 should be extended in the event of (i) any continued commercial unavailability of the Indian Lottery Games identified in Exhibit A of this Compact, or (ii) the lack of a reasonable period for the certification of said Lottery Device or Lottery Device System in accordance with subsection 4.3.2, or (iii) unfair competition through the continuation of uncompacted and State-law-prohibited gaming at neighboring tribal facilities; provided, however, that this subsection shall not be interpreted to constitute a presumption in favor of extending the one hundred eighty (180) day limit. If the parties agree to an extension, it shall be memorialized in an Addendum to this Compact,

initialed by the State and the Tribe, and shall take effect immediately.

20.3 Key Employees. With respect to any person occupying a Key Employee position as of the effective date of this Compact (as set forth in Section 2.1), that person shall apply for a state determination of Suitability no later than 30 days after the effective date of the Compact, instead of the ten (10) day period provided under subsection 5.5.1.

20.4 Gambling Enterprise Employees. With respect to any person employed as Gambling Enterprise Employees in the Tribe's Class III Gaming operation as of the effective date of this Compact (as set forth under section 2.1), the Tribe shall have thirty (30) days from said effective date, rather than 48 hours, within which to transmit, for receipt by the Division, a copy of the person's application for a work permit pursuant to subsection 5.9.2.1.

20.5 Safeguards for Those Associating With Current Operations. The fact that a Person is associated with the Tribe's current Class III Gaming activities to which consent is granted during the transition period pursuant to Section 20.1 or 20.2 shall not in and of itself be a ground for denying, suspending, or revoking a state determination of Suitability.

20.6 Exception to Age Restriction. During the transition period specified in Sections 20.1 and 20.2, the age restriction specified in Section 9.3 shall not apply to Service Employees employed in the Facility acting in their capacity as Service Employees. Additionally, during the transition period specified in Sections 20.1 and 20.2, during any period in which the Tribe is in substantial compliance pursuant to Section 20.9, underage persons may pass through the Class III Gaming area for the sole purpose of reaching the non-Class III Gaming areas of the Facility.

20.7 Transition Fire Safety, Medical, and Security Obligations. The obligations which must be completed no later than thirty (30) days before the commencement of Class III Gaming activities under subsections 12.3.2, 12.4.2 and 12.5.2 shall be deemed satisfied if they are performed within 30

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days of the effective date of this Compact. The obligation under subsection 12.3.4 to certify that all deficiencies have been corrected shall be satisfied within sixty (60) days of the effective date of this Compact, or within such period of time as is agreeable to the Division, which agreement shall not be unreasonably withheld. With respect to the initial certification under subsection 12.5.2 that the security needs identified in the written report specified thereunder have been met, the Tribe may continue its Class III Gaming activities as long as the certification is provided to the Division within sixty (60) days of the effective date of this Compact. Except to the extent modified herein, all the provisions specified in Article 12 remain in effect.

20.8 Extension of Deadline for County Participation Agreement. Under subsection 15.1.1, the Tribe need not enter into the County Participation Agreement prior to the commencement of Class III Gaming, but must enter it within 270 days (or in the event of an arbitration under subsection 15.6.1, within 365 days) of the effective date of this Compact in order to continue the operation of its Class III Gaming.

20.9 Class III Gaming Separation. During the transition period referenced in Sections 20.1 and 20.2, in lieu of full compliance with subsection 9.2.2, the Tribe can choose to substantially comply with the requirements of subsection 9.2.2 by (i) submitting a plan to the State, which provides for substantial compliance, (ii) obtaining the State's approval of the plan (which the State shall not unreasonably withhold), and (iii) complying with such plan.

20.10 Statutory Successor Compact. If the statutory initiative known and cited as "Tribal Government Gaming and Economic Self-Sufficiency Act of 1998," qualified for placement on the November 3, 1998 general election ballot, takes effect and thereafter either (1) no legal challenge to said statute is filed within one (1) year of approval by the Secretary of the Interior of a tribal-state gaming compact provided under proposed California Government

Code section 98004, or (2) a final decision of a California appellate court, from which no further review can be sought, holds that the initiative is constitutional, the Tribe may terminate this Compact upon 45 days' notice after the Governor has executed the tribal-state gaming compact provided under proposed California Government Code section 98004, unless a court enjoins the effectiveness or implementation of said tribal-state gaming compact provided under proposed California Government Code section 98004 before the expiration of the 45-day period.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the Viejas Band of Kumeyaay Indians.

Done at Sacramento this 24th day of August, 1998.

STATE OF CALIFORNIA

By Pete Wilson
Governor of the State of California

VIEJAS BAND OF KUMEYAAY INDIANS

By Anthony Pico
Chairman of the Viejas Band of Kumeyaay Indians

ATTEST:

By Bill Jones
Secretary of State, State of California

DEPARTMENT OF THE INTERIOR

KEVIN GOVER
ASSISTANT SECRETARY – INDIAN AFFAIRS

OCT 29 1998
DATE

EXHIBIT A-1

INDIAN VIDEO LOTTERY MATCH GAME

1.1 Definitions.

1.1.1 Cashier Terminal. An attendant terminal located remotely from the IVLTs, which, in communication with the CAS, verifies Redemption Tickets and Game Play Tickets.

1.1.2 Central Accounting Server ("CAS"). A central computer connected to IVLTs, Cashier Terminals, and the CGS. The CAS is programmed to perform the following functions:

1.1.2.1 Management of player account databases consisting of the amount of money deposited, any winnings or losses of the player, any credit due to the player, and accounting functions unrelated to the play of the Game.

1.1.2.2 Accounting for the administrative fee deducted from a player's Wager.

1.1.2.3 Storage of the CGS Draws and player enrollment for each Game.

1.1.2.4 Management, allocation, and accounting with respect to all prize pools, on an individual and aggregate basis.

1.1.2.5 Accounting and tracking of IVLT activity.

1.1.3 Central Game Server ("CGS"). A central computer programmed solely to draw, randomly, periodically and independently of the CAS and IVLTs, up to twenty-five (25) numbers from a field of eighty (80) numbers ("CGS Draw") in order to determine the outcome of a lottery game. The CGS communicates the CGS Draws to the Central Accounting Server and to the Scoreboard displays. The CGS is housed separately from, and shall not interact with, the IVLTs.

1.1.4 Confirmation Ticket. A tangible printed ticket which identifies in a form legible to the player the IVLT identifier and the following for each Game: Player Choices, Game Identifier and Wager(s).

1.1.5 Game. A process by which Player Choices are enrolled for a particular CGS Draw, and which ends with the completion of the CGS Draw, the display on the Scoreboard of the CGS Draw, and the determination of the resulting prizes by the CAS.

1.1.6 Game Identifier. The symbol, number, or name which identifies the particular Game in which the Player Choices are enrolled.

1.1.7 Game Play Ticket. A printed or electronically encoded ticket, which shall be tangible and which shall either have printed on it in a legible form or cause to be displayed on the IVLT in a legible form, the following for each Game: Player Choices, Game Identifier and Wager, and for purposes of verification only, the date and time of the enrollment, and IVLT identifier.

1.1.8 Game Results. The results of a Game, which contain the following information: the Game Identifier; Player Choices; CGS Draw; prizes available for that Game; the prize, if any, won; and the player credit balance. Game Results may be displayed in an entertaining manner.

1.1.9 Indian Video Lottery Terminal ("IVLT"). An on-line player activated self-serve terminal, connected to the CAS, with video screen or other electronic display, which dispenses a Game Play Ticket immediately after a player's enrollment in a Game. The IVLT may also dispense a Redemption Ticket at the player's request and a Confirmation Ticket pursuant to subsection 1.2.5. The IVLT does not dispense coins or currency, emit sounds of bells or whistles or sounds simulating the dispensing of coins or currency, is not activated by a handle, and performs only the following functions that are related to the Game:

1.1.9.1 Accepts currency or other representative of value qualifying the player to participate in one or more Games.

1.1.9.2 Provides players with the ability to choose, or have the IVLT "quick pick" for them, combinations of numbers or spots ("Player Choices").

1.1.9.3 Electronically displays the Game Identifier and the

Player Choices using a dedicated display area that is designated for that function only. Player Choices are displayed on the IVLT at least as long as the CGS Draw for the Game in which a player is enrolled is displayed on the Scoreboard; provided that if the player initiates the verification process described in subsection 1.1.9.6 below before that time, the Player's Choice for that Game shall no longer be displayed in the dedicated area of the IVLT display.

1.1.9.4 Records Player Choices and Game Identifier on a Game Play Ticket, dispenses the Game Play Ticket, and prints Confirmation Tickets pursuant to subsection 1.2.5 and prints Game Play Tickets and/or Redemption Tickets.

1.1.9.5 Displays player information such as credit balance and Game enrollment.

1.1.9.6 Displays, for verification purposes, the Game Results, in an area separate from that which displayed the Player Choices, and only upon activation of the IVLT by inserting a Game Play Ticket into the IVLT for that purpose only; provided that if the Game Play Ticket is inserted for verification before the completion of all games enrolled on the ticket, the Game Play Ticket shall be ejected without the IVLT displaying any Game results.

1.1.9.7 Displays, at the player's option, the current value of each prize pool, and the overall estimated odds of winning a prize.

1.1.9.8 Performs security functions necessary to maintain the integrity of the operation of the terminal.

1.1.10 Player Choices. With respect to each Game, the selection by or on behalf of the player of between two (2) and ten (10) numbers or "spots" from a field of eighty (80).

1.1.11 Prize Level. For a given number of spots, the specified number of Player Choices that must match a CGS Draw to make a player eligible for a prize.

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For example, a "5-spot" Game consists of an enrollment of five Player Choices in a CGS Draw, and might have three Prize Levels: the correct match of five of the five Player Choices, four of the five Player Choices, and three of the five Player Choices.

1.1.12 Redemption Ticket. A Game Play Ticket or other printed or electronically encoded ticket, which shall be tangible and which identifies the player credit balance for redemption purposes, date and time of the ticket's issuance, IVLT identifier, and a unique verification code.

1.1.13 Scoreboard. One or more remotely located electronic displays, large enough for players to view, which displays each of the CGS Draws for at least the last ten (10) Games played. The display of each CGS Draw will remain in a fixed position on the electronic display for no less than ten (10) seconds.

1.1.14 Wager. The amount paid by a player for enrollment in a Game.

1.2 Game Play.

1.2.1 Player inserts currency or other representative of value into an IVLT, entitling the player to participate in one or more Games.

1.2.2 Player selects the number of Games to be played and the amount to be wagered for each Game.

1.2.3 With respect to each Game, the player selects the Player Choices by touching the dedicated display or a panel of buttons designated for such purposes, or through the use of a "quick pick" selection button.

1.2.4 Player Choices are communicated to the CAS, then enrolled by the CAS in the next available Game(s), and then encoded on a Game Play Ticket. Following the enrollment, the Player Choices are displayed on the IVLT in accordance with the provisions of subsection 1.1.9.3. The Game Play Ticket is then ejected from the IVLT prior to the CGS Draw described in subsection 1.2.5 below and prior to the display of the CGS Draw on the Scoreboard. The Game Play Ticket is available for removal from the IVLT at any time after ejection.

1.2.5 At the same time the Game Play Ticket is ejected, a prompt shall appear on the IVLT display offering to print out a Confirmation Ticket, which the

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player may remove from the IVLT at any time after ejection of the Game Play Ticket. If the player removes the Game Play Ticket from the IVLT prior to the verification of the Game Results, the IVLT shall print a Confirmation Ticket.

1.2.6 The CGS Draw occurs and is displayed on the Scoreboard. The player may view the CGS Draw on the Scoreboard to determine whether the player has a winning Game Play Ticket.

1.2.7 Only following the display of the CGS Draw, can the IVLT be activated to display the Game Results with respect to that CGS Draw, as provided in subsection 1.1.9.6 above.

1.2.8 In lieu of inserting the Game Play Ticket into the IVLT for purposes of displaying the Game Results, the player may leave the IVLT, and at a later time, verify the Game Results by inserting the Game Play Ticket into any available IVLT or by handing it to a cashier for verification.

1.2.9 A player may choose to "cash out" player credits in one of two ways: by requesting and receiving a Redemption Ticket from the IVLT and presenting it to a cashier, or by presenting the Game Play Ticket to a cashier. In each case, the ticket shall be entered at a Cashier Terminal, which in communication with the CAS, verifies player credit balance, and the player is then paid by the cashier.

1.2.10 Game Play Tickets and Redemption Tickets shall remain valid for at least fourteen (14) days from the date of the last Game enrolled on the ticket.

1.3 Prize Structure.

1.3.1 Prize Eligibility. In each Game, a player is eligible to win a prize at each Prize Level. Each Game may have one or more Prize Levels. Each Prize Level is associated with a prize, for which the amount, or in conformity with subsection 1.3.4 below, the method of computation based on the prize pool, is announced in advance of each CGS Draw.

1.3.2 Source of Prizes. Any prize distributed in connection with a Prize Level shall be distributed from and solely funded by Wagers which have been allocated to a pool ("prize pool") associated with that Prize Level. There shall be

one regular prize pool for each Prize Level (e.g., a 2/3 prize pool, a 4/7 prize pool), plus a reserve prize pool for each Prize Level. The sole function of the reserve prize pool shall be to replenish its associated regular prize pool if depleted, or to supplement bonus or jackpot prizes for that or a higher Prize Level.

1.3.3 Prize Pool Accounting. When a Wager is collected from a player, the Wager is recorded by the CAS, which deducts an administrative fee and allocates the balance of the Wager among one or more prize pools for that Game. Undistributed prizes in any prize pool following a CGS Draw shall be carried forward to future CGS Draws; provided that Wagers once allocated to a prize pool associated with a Prize Level must thereafter remain available as prizes for that Prize Level or another Prize Level with the same or higher Prize value within the same Player Choice category. Examples of Player Choice categories are a 3-spot Player Choice or a 5-spot Player Choice. If, for any reason, the Tribe discontinues the Indian Video Lottery Match Game described in this Exhibit for a period of at least sixty (60) days, undistributed prizes in any prize pool can only be transferred to prize pools in other games approved pursuant to this Compact.

1.3.4 Determination of Prizes. Prizes may be distributed in predetermined amounts from, or as a share of, the regular or reserve prize pool associated with a Prize Level. If predetermined prizes are to be distributed, there must be sufficient money in the prize pool associated with that Prize Level to distribute the same prize to all winners. If there is not, the predetermined prize amount shall be adjusted to permit the distribution of equal prizes among all winners at that Prize Level for the CGS Draw. No prize or group of prizes distributed at any Prize Level may exceed the total amount in the prize pool (including the reserve prize pool) associated with that Prize Level at the time of the applicable CGS Draw, nor may the total prizes distributed for all Prize Levels in any CGS Draw exceed the total amount then available from all prize pools combined.

1.3.5 Administrative Fee. The Tribe's revenue from a Game shall be exclusively the administrative fee deducted at the time of enrollment. The

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administrative fee may be calculated solely as a percentage of each Wager or as a fixed amount per enrollment. The administrative fee shall be independent of, and may not be based upon, the amount in any prize pool or the value of any prizes distributed. Players shall be given reasonable notice of the maximum amount of the administrative fee that may be deducted at the time of enrollment.

1.3.6 Temporary Line of Credit. Notwithstanding subsection 1.3.2, the Tribe may make a one time loan for the initial start-up funding of the prize pools for the Indian Video Lottery Match Game. Said loan shall be repaid within twelve (12) months.

1.3.7 Display of Prize Values and Pool Balances. The calculation of prizes and prize pool balances shall be performed by the CAS. Prize and prize pool balance information may be transmitted to the IVLTs and the Scoreboard for display.

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EXHIBIT A-2

INDIAN VIDEO LOTTERY SCRATCHER GAME

2.1 Definitions.

2.1.1 Cashier Terminal. An attendant terminal located remotely from the IVLTs, which, in communication with the CAS, verifies Redemption Tickets and Game Play Tickets.

2.1.2 Central Accounting Server ("CAS"). A central computer connected to IVLTs, Cashier Terminals, and the CGS. The CAS is programmed to perform the following functions:

2.1.2.1 Management of player account databases consisting of the amount of money deposited, any winnings or losses of the player, any credit due to the player, and accounting functions unrelated to the play of the Game.

2.1.2.2 Accounting for the receipts of player purchases.

2.1.2.3 Storage of the CGS Draws and player enrollment for each Game.

2.1.2.4 Management, allocation, and accounting with respect to all Prize Pools, on an individual and aggregate basis.

2.1.2.5 Accounting and tracking of IVLT activity.

2.1.3 Central Game Server ("CGS"). A central computer programmed solely to draw, randomly, periodically and independently of the CAS and the IVLTs, a number of Prizes in sequence from a prize pool ("CGS Draw"). The CGS communicates the CGS Draws to the Central Accounting Server and to the Scoreboard displays. The CGS is housed separately from, and shall not interact with, the IVLTs.

2.1.4 CGS Draw Identifier. The symbol, number, or name which identifies the particular CGS Draw in which the player is enrolled.

2.1.5 CGS Draw Results. The results of a CGS Draw, which contain the following information: the CGS Draw identifier; the Prize Position(s) assigned to the

player; the Prize for each Prize Position; and the player credit balance. CGS Draw Results may be displayed in an entertaining manner.

2.1.6 Confirmation Ticket. A tangible printed ticket which identifies in a form legible to the player the IVLT identifier and the following for each CGS Draw in which the player has enrolled: CGS Draw Identifier, Prize Position(s) for each Player Purchase, and the amount of the Player Purchase.

2.1.7 Enrollment. The recording by the CAS of Player Purchases and assigning Prize Positions to them with respect to the next available CGS Draw.

2.1.8 Game. The distribution to players of all Prizes in a Prize Pool.

2.1.9 Game Play Ticket. A printed or electronically encoded ticket, which shall be tangible and which shall either have printed on it in a legible form or cause to be displayed on the IVLT in a legible form the following for each CGS Draw in which the player is enrolled: Player Purchase(s), Prize Position for each Player Purchase, CGS Draw Identifier, amount of the Player Purchase, and for purposes of identification only, date and time of enrollment, and the IVLT identifier.

2.1.10 Indian Video Lottery Terminal ("IVLT"). An on-line player activated self-serve terminal, connected to the CAS, with video screen or other electronic display, which dispenses a Game Play Ticket immediately after a player's enrollment in a CGS Draw. The IVLT may also dispense a Redemption Ticket at the player's request and a Confirmation Ticket pursuant to subsection 2.2.4. The IVLT does not dispense coins or currency, emit sounds of bells or whistles or sounds simulating the dispensing of coins or currency, is not activated by a handle, and performs only the following functions that are related to the Game:

2.1.10.1 Accepts currency or other representative of value qualifying the player to participate in one or more CGS Draws.

2.1.10.2 Electronically displays the player's Prize Position(s) using a dedicated display area that is designated for that function only. Player Prize Position(s) are displayed on the IVLT at least as long as the CGS Draw in which a player is enrolled is displayed on the Scoreboard;

provided that if the player initiates the verification process described in subsection 2.1.10.5 below before that time, the player's Prize Position(s) for that draw shall no longer be displayed in the dedicated area of the IVLT display.

2.1.10.3 Records player's Prize Positions and CGS Draw Identifier on a Game Play Ticket, dispenses the Game Play Ticket, and prints Confirmation Tickets pursuant to subsection 2.2.4 and prints Game Play Tickets and/or Redemption Tickets.

2.1.10.4 Displays player information such as credit balance and other enrollment information.

2.1.10.5 Displays, for verification purposes, the CGS Draw Results, in an area separate from that which previously displayed the player's Prize Position(s), and only upon activation of the IVLT by inserting a Game Play Ticket into the IVLT for that purpose only; provided that if the Game Play Ticket is inserted for verification before the completion of all draws enrolled on the ticket, the Game Play Ticket shall be ejected without the IVLT displaying any CGS Draw Results.

2.1.10.6 Performs security functions necessary to maintain the integrity of the operation of the terminal.

2.1.11 Player Purchase. The purchase of the right to be enrolled in a Prize Position, each of which will correspond to a Prize randomly drawn in a subsequent CGS Draw.

2.1.12 Prize. A predetermined, fixed monetary value, including a zero value, drawn from a Prize Pool, which is distributed to a player based on the Prize Position that has been assigned through the purchase of a Game Play Ticket.

2.1.13 Prize Pool. A predetermined number of Prizes, each of which has a predetermined value (including a zero value), and all of which are to be randomly distributed to players pursuant to one or more CGS Draws. Once a Prize has been drawn and won, it is removed from the Prize Pool.

2.1.14 Prize Position. The sequential position of a Prize within the order of all Prizes drawn in a CGS Draw.

2.1.15 Redemption Ticket. A Game Play Ticket or other printed or electronically encoded ticket, which shall be tangible and which identifies the player credit balance for redemption purposes, date and time of the ticket's issuance, IVLT identifier, and a unique verification code.

2.1.16 Scoreboard. One or more remotely located electronic displays, large enough for players to view, which displays the CGS Draw Identifier and the associated CGS Draw for at least the last ten (10) CGS Draws played. The display of each CGS Draw will remain in a fixed position on the electronic display for no less than ten (10) seconds.

2.2 Game Play.

2.2.1 Player inserts currency or other representative of value into an IVLT in order to enroll in one or more Prize Positions that give the player an opportunity to win a Prize with respect to each Prize Position.

2.2.2 The player then touches the dedicated display or a panel of buttons.

2.2.3 As a result of these actions, the player is enrolled by the CAS in chronological order in the next available CGS Draw, at which point the player is assigned one or more Prize Positions, and the Prize Position(s) are then encoded on a Game Play Ticket. Following the enrollment, the player's assigned Prize Position(s) is displayed on the IVLT in accordance with the provisions of subsection 2.1.10.2. The Game Play Ticket is then ejected from the IVLT prior to the CGS Draw and its display on the Scoreboard. The Game Play Ticket is available for removal from the IVLT at any time after ejection.

2.2.4 At the same time the Game Play Ticket is ejected, a prompt shall appear on the IVLT display offering to print out a Confirmation Ticket, which the player may remove from the IVLT at any time after ejection of the Game Play Ticket. If the player removes the Game Play Ticket from the IVLT prior to the verification of the CGS Draw Results, the IVLT shall print a Confirmation Ticket.

2.2.5 The enrolled CGS Draw occurs, in which Prizes are randomly selected from a Prize Pool and retained in the order drawn. The CAS and CGS remove from the Prize Pool all Prizes which have been drawn and match a Prize Position assigned to a player.

2.2.6 Following the CGS Draw, the Prizes, in the Prize Position sequence in which they are drawn, are displayed on the Scoreboard along with the CGS Draw Identifier. The player may view the CGS Draw on the Scoreboard to determine the Prizes corresponding with the Prize Positions purchased in that draw.

2.2.7 Only following the display of the CGS Draw can the IVLT be activated to display the CGS Draw Results with respect to that CGS Draw, as provided in subsection 2.1.10.5 above.

2.2.8 In lieu of inserting the Game Play Ticket into the IVLT for purposes of displaying the CGS Draw Results, the player may leave the IVLT and at a later time verify the CGS Draw Results by inserting the Game Play Ticket into any available IVLT or by handing it to a cashier for verification.

2.2.9 A player may choose to "cash out" player credits in one of two ways: by requesting and receiving a Redemption Ticket from the IVLT and presenting it to a cashier, or by presenting the Game Play Ticket to a Cashier. In each case, the ticket shall be entered at a Cashier Terminal, which in communication with the CAS, verifies player credit balance, and the player is then paid by the cashier.

2.2.10 Game Play Tickets and Redemption Tickets shall remain valid for at least fourteen (14) days from the date of the last CGS Draw enrolled on the ticket.

2.3 Prize Structure.

2.3.1 Prize Eligibility. For each Player Purchase, and pursuant to a CGS Draw, a Prize is distributed to a player. All Prizes and their frequency of occurrence in the Prize Pool for a Game shall be posted prior to the start of that Game. Unredeemed Prize Values shall be used to fund Prizes in future Prize Pools.

2.3.2 Accounting. All receipts from Player Purchases shall be the property of the Tribe, which shall be responsible for paying all Prizes awarded in the Game,

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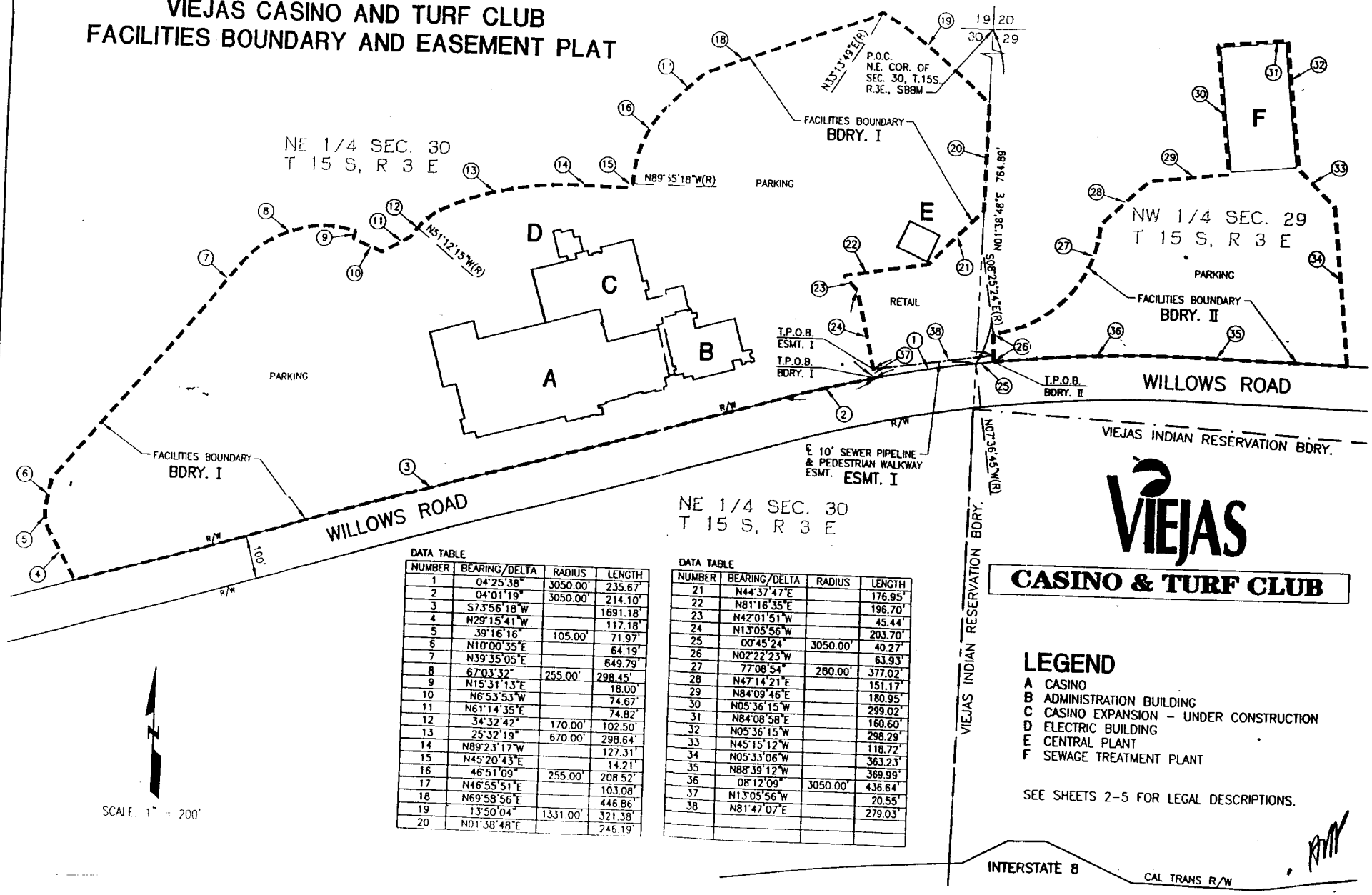
and the Tribe shall maintain accurate books and records at all times to demonstrate its financial capability to do so. A Prize Pool from which sales have been made must thereafter be offered continuously during business hours until played to completion, provided that if player purchase(s) of a Game are thirty percent (30%) or less than the average value of player purchases of all other games in this Exhibit A-2 for each day for four (4) consecutive days, the Game may be withdrawn, in which case the amount representing the balance of the total Prize Pool for that Game shall be transferred to other games played in accordance with this Exhibit A-2.

2.3.3 Determination of Prizes. All Prizes in a Prize Pool shall be fixed and pre-determined prior to the start of a Game.

2.3.4 Administrative Fee. The Tribe's only fee for offering an Indian Video Lottery Scratcher Game shall be the difference between receipts from all player purchases and all Prizes included in the prize pool in each Game.

EXHIBIT B

VIEJAS CASINO AND TURF CLUB
FACILITIES BOUNDARY AND EASEMENT PLAT



DATA TABLE

NUMBER	BEARING/DELTA	RADIUS	LENGTH
1	04°25'38"	3050.00'	235.67'
2	04°01'19"	3050.00'	214.10'
3	S73°56'18"W		1691.18'
4	N29°15'41"W		117.18'
5	39°16'16"	105.00'	71.97'
6	N10°00'35"E		64.19'
7	N39°35'05"E		649.79'
8	67°03'32"	255.00'	298.45'
9	N15°31'13"E		18.00'
10	N6°53'53"W		74.67'
11	N61°14'35"E		74.82'
12	34°32'42"	170.00'	102.50'
13	25°32'19"	670.00'	298.64'
14	N89°23'17"W		127.31'
15	N45°20'43"E		14.21'
16	46°51'09"	255.00'	208.52'
17	N46°55'51"E		103.08'
18	N69°58'56"E		446.86'
19	13°50'04"	1331.00'	321.38'
20	N01°38'48"E		246.19'

DATA TABLE

NUMBER	BEARING/DELTA	RADIUS	LENGTH
21	N44°37'47"E		176.95'
22	N81°16'35"E		196.70'
23	N42°01'51"W		45.44'
24	N13°05'56"W		203.70'
25	00°45'24"	3050.00'	40.27'
26	N02°22'23"W		63.93'
27	77°08'54"	280.00'	377.02'
28	N47°14'21"E		151.17'
29	N84°09'46"E		180.95'
30	N05°36'15"W		299.02'
31	N84°08'58"E		160.60'
32	N05°36'15"W		298.29'
33	N45°15'12"W		118.72'
34	N05°33'06"W		363.23'
35	N88°39'12"W		369.99'
36	08°12'09"	3050.00'	436.64'
37	N13°05'56"W		20.55'
38	N81°47'07"E		279.03'

LEGEND

- A CASINO
- B ADMINISTRATION BUILDING
- C CASINO EXPANSION – UNDER CONSTRUCTION
- D ELECTRIC BUILDING
- E CENTRAL PLANT
- F SEWAGE TREATMENT PLANT

SEE SHEETS 2-5 FOR LEGAL DESCRIPTIONS.

DATE: 7/8/98
CAD FILE: 9864\ESMTS.DWG

VIEJAS FACILITIES

The Viejas Facilities consists of 36.91 acres of property which lies on the North side of Willows Road within the Viejas Indian Reservation. (See the attached photograph, map and legal descriptions.)

The attached maps depict the Facilities consisting of two (2) parcels of land (Boundary I and Boundary II) connected by an easement for utilities and access.

The Facilities include:

1. Facility Boundary I - 30.07 acres
   A. Casino Building - 144,000 square feet
   B. Administration Building - 43,300 square feet
   C. Casino Expansion Building (under construction) - 75,600 square feet
   D. Electrical Equipment Building - 3,200 square feet
   E. Central Plant (Chilled Water Plant) - 5,000 square feet
   – Customer Parking Lots - 1,720 spaces

2. Facilities Boundary II - 6.84 acres
   F. Sewer Treatment and Water Reclamation Plant
   – Employee Parking Lot - 525 spaces

1. Easement I - 2,790 square feet
   This Easement is a strip of land ten (10) feet in width, 279 feet in length and is for the purpose of pedestrian access and underground utilities.

The Viejas Facilities is provided with access and utilities as follows:

a. Access - Willows Road, which is a public roadway within a 100-foot wide right-of-way which runs along the Southerly side of the Viejas Facilities.
b. Electricity - San Diego Gas & Electric
c. Telephone - Pacific Telephone
d. Water and Fire Protection - 12-inch water main from the Viejas Water System