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Attention:

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**COMMENTS ON BEHALF OF ASSOCIATION OF GAMING EQUIPMENT
MANUFACTURERS**

The following comments are submitted on behalf of the Association of Gaming Equipment Manufacturers ("AGEM"). These comments are in response to the National Indian Gaming Commission's ("NIGC") Notice of Inquiry and Notice of Consultation dated November 18, 2010, regarding the NIGC's comprehensive review of all regulations promulgated to implement the Indian Gaming Regulatory Act ("IGRA") and the NIGC's announced intent to take a "fresh look at its rules in order to determine whether amendments are necessary to more effectively implement IGRA's policies of protecting Indian gaming as a means of generating Tribal revenue, ensuring that gaming is conducted fairly and honestly by both the operator and players, and ensuring that Tribes are the primary beneficiaries of gaming operations."

I. BACKGROUND OF AGEM AND INTEREST IN SUBMITTING COMMENTS

AGEM is an international trade association representing manufacturers of electronic gaming devices, systems, and components for the gaming industry. AGEM works to further the interests of gaming equipment manufacturers throughout the world. AGEM acts upon issues relating to education, regulation, manufacturing and licensing standards, and promotes the expansion of responsible gaming for the benefit of its members and the gaming industry. AGEM currently has approximately 110 members, many of whom are doing business with tribal casinos around the United States.

Although AGEM understands that the NIGC intends to review all of its regulations, AGEM's primary interest is in providing comments pertinent to Part 502 Definitions and whether the definition of management contract should be expanded to include "any contract, such as slot lease agreements, that pays a fee based on a percentage of gaming revenues." It is AGEM's position that the definition of management contract should not be expanded.

**II. NIGC REVIEW OF MANAGEMENT CONTRACTS IS INTENDED TO
PROTECT INTEGRITY OF TRIBAL GAMING INDUSTRY**

The current NIGC regulations define a management contract as "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation." 25 C.F.R. Section 502.15. A collateral agreement is defined as "any contract, whether or not in writing, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor)." 25 C.F.R. Section 502.5. Failure to obtain approval of a management contract can result in severe consequences. Indeed, a management contract that has not been approved by the NIGC Chair is void and unenforceable. As a result, the parties to such a contract are reluctant to take any action until approval has been secured.

Since the passage of the IGRA and promulgation of the NIGC regulations, a total of 64 management contracts have been approved by the NIGC. See NIGC Website regarding approved management contracts. (The first contract was approved in October, 1993, and the most recent contract approval - as posted on the NIGC website - was October, 2010.) From a pure statistical perspective, that results in an average of 3-4 management agreements being approved over a year's time. Understandably, the review process for a management contract is extensive. There are three prongs to the NIGC approval process. Each prong must be completed in its entirety before the management contract can be approved by the NIGC Chair. These prongs include (1) legal and financial review of the management agreement and all collateral documents; (2) compliance with the National Environmental Policy Act ("NEPA"); and (3) background investigation/finding of suitability of all companies and individuals with a direct or indirect financial interest in the management contract, as well as anyone having management responsibilities for the management contract.

Pursuant to the NIGC website's "Helpful Hints for Submitting a Management Contract and Obtaining the Chairman's Approval," the NIGC acknowledges that the review process is "comprehensive" and the length and amount of time involved in the review process are dependent upon several factors. These include: (1) the completeness of the submission, (2) responsiveness of the parties, (3) degree to which the submission meets the IGRA requirements, and (4) the NIGC's backlog. Based on this comprehensive review process, obtaining approval of a management contract can take several months and, in most cases, 9-12 months - if not longer, depending on the circumstances.

Pursuant to the IGRA, the NIGC is charged with certain authority to oversee tribal gaming operations, which includes the review of management contracts to "ensure lasting integrity of the gaming industry". See, Coyote Valley Band of Pomo Indians v. California, 331 F. 3d 1094 (9th Cir. 2003), cert. denied, 540 U.S. 1179 (2004). As noted above, the review of a management contract includes a

comprehensive and exhaustive background investigation of all companies and entities with a financial interest in the management contract, as well as anyone having management responsibilities for the management contract. The manager has intimate and extensive involvement with all aspects of the tribal gaming operations, including financials, security, surveillance, employment, and other extremely sensitive components of running a casino. As such, it is reasonable for the NIGC to assure that all companies and individuals involved in the management of the tribal casino have been thoroughly backgrounded to assure there are no unsuitable entities or individuals involved that could impact the integrity of the tribal casino operations.

III. REVIEW OF SLOT LEASE AGREEMENTS IS UNNECESSARY TO PROTECT INTEGRITY OF TRIBAL GAMING INDUSTRY

The addition of other contracts, such as slot lease agreements, to the definition of management agreements would unreasonably and exorbitantly increase the administrative burden already faced by the NIGC in its management contract review process. A slot lease agreement is an agreement whereby the tribal casino leases certain gaming device equipment (ie, slot machines) from a vendor. The vendor retains ownership over the slot machines while they are being used by the tribal casino; however, the tribal casino retains the sole decision-making duties for placement of the slot machines and their operation within the tribal casino. The vendor is compensated based on the amount of play and revenues generated by each particular machine. The vendor has absolutely no control over the slot machines once they have been placed in the tribal casino. The vendor will periodically visit the tribal casino to service the slot machines or respond to technical requests from the tribal casino. Otherwise, the tribal casino is in charge of managing the machines as part of the overall tribal casino operations. The vendor has no management functions whatsoever over the tribal gaming operations. The vendor has no access to sensitive areas of the tribal casino such as the cage, backroom, surveillance areas, and the like. The vendor has no involvement whatsoever in the tribal casino activities, other than participating in the revenues from the gaming devices. All control and management resides with the Tribe, and not the vendor. As such, there are no "integrity" or similar issues associated with slot lease agreements, as there may be with a management contract.

At present, there are over 400 tribal gaming operations around the United States. As a result, there are thousands of slot lease agreements already in place around the country. These agreements have become extremely commonplace in the gaming industry over the last number of years. Indeed, it is possible that more than half (if not more) of all tribal contracts with gaming device vendors are slot lease/participation arrangements. Participation and lease agreements are considered the normal form for commercial transactions used in many industries, not just gaming. For example, the technology sector has multiple kinds of "participation" arrangements such as recurring license fees for computer

programs. That is the same concept applicable to gaming device vendors and participation/lease agreements. In these other industries, there is no suggestion that any of the vendors who are employing these agreements are somehow directing or otherwise participating in the business of their customers.

Moreover, the slot lease agreements are usually only in place for a limited timeframe (sometimes one year or less) and terminable at will within 30-60 days. Accordingly, these agreements usually require renegotiation on a more frequent basis than management contracts, which can have a term as long as 7 years.

Based on the foregoing, adding the review of slot lease agreements to the NIGC's already busy workload would present a tremendous administrative burden, with no added value of "ensuring lasting integrity of the gaming industry." There are already sufficient protections in place to monitor the slot lease agreements. Most, if not all, of the tribal regulators require that the gaming device vendors involved with slot lease agreements obtain tribal gaming licenses, which necessarily involves disclosures and background checks.

As noted above, non-compliance with the IGRA and the NIGC regulations in not obtaining approval of a management contract can be severe - the management contract may be deemed void and unenforceable. To extend NIGC review over slot lease agreements, will essentially disrupt the tribal gaming operations if a slot lease agreement cannot be deemed valid and enforceable until the NIGC approves it. The NIGC should not expand the definition of management contracts to include slot lease agreements.

RESPECTFULLY SUBMITTED on behalf of the Association of Gaming Equipment Manufacturers.

Dated: February 11, 2011

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