BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

North Central Electric Cooperative, Inc.	)	
	)	
Complainant	)	
vs.	)	
	)	
Otter Tail Power Company,	)	
	)	**Case No. PU-11-701**
Respondent.	)	

BRIEF OF NORTH CENTRAL ELECTRIC COOPERATIVE, INC. RESPONDING TO OTTER TAIL'S MOTION TO DISMISS

Nature of the Case

This case is one in a series of disputes between rural electric cooperatives and electric public utilities following enactment of the Territorial Integrity Act in 1965. ". . . [T]he typical conflict . . . arises when a potential customer, on or near the edge of a city served by a public utility under a franchise but within a rural area served by a rural electric cooperative, seeks service which each of the suppliers would like to furnish. It was to settle such controversies with a minimum of wasteful duplication and conflict that the Territorial Integrity Act was passed." Cass County Elec. Coop. v. Wold Properties, Inc., 249 N.W.2d 514, 520 (N.D. 1977).

Typical cases begin with an electric public utility's application for a certificate of public convenience and necessity under N.D.C.C. § 49-03-01.1, et. seq. (the Territorial Integrity Act) seeking authority to extend service to a place to be served in a rural area and a rural electric cooperative's objection to the application. This untypical case commenced on North Central Electric Cooperative's (herein North Central) complaint

under N.D.C.C. §§ 49-03-01.4 and 49-03-05 that Otter Tail Power Company (herein Otter Tail) began construction of an extension of its public utility plant and system without having first obtained a certificate of public convenience and necessity.

Procedural Background

On December 12, 2011, North Central filed a complaint and affidavit alleging that Otter Tail threatens to and has begun the construction of an extension of its public utility plant and system to serve a customer at a place to be served not located within the corporate limits of any municipality in Rolette County without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction and that construction by Otter Tail is a violation of N.D.C.C. §§ 49-03-01 through 49-03-01.5. The customer at the place to be served is the Sky Dancer Hotel and Casino. The complaint also alleges Otter Tail's construction interferes with North Central's service and system.

On December 21, 2011, the Commission found that North Central's complaint stated a prima facie case.

On January 16, 2012, Otter Tail filed an answer to North Central's complaint admitting the allegation about construction but "...specifically denies that a certificate of public convenience and necessity is required to supply electric service to the Turtle Mountain Band of Chippewa Indians' (Tribe) facility located on the Turtle Mountain Indian Reservation...." and the Public Service Commission does not have regulatory authority over the Tribe's determination of who will provide electric service to a Tribally owned facility on Tribal land located on the Turtle Mountain Reservation...." Otter Tail's answer also denied North Central's interference claim. Answer ¶¶ IV and XI.

On January 16, 2012, Otter Tail filed a motion to dismiss the complaint in and a brief in support of the motion.

Facts of the Case

The pleadings and Otter Tail's motion establish the following facts:

1. North Central is a "rural electric cooperative" under N.D.C.C. § 49-03-01.5(6). North Central is an interested electric cooperative corporation under ND.C.C. § 49-03-05. Complaint, ¶ 1.
2. Otter Tail is an "electric public utility" under N.D.C.C. 49-03-01.5(2). Complaint, ¶ 2; Answer ¶ III.
3. Otter Tail threatens to and has begun the construction of an extension of its public utility plant and system and of its transmission and distribution lines to serve a customer in the SW ¼ of Section 34, Township 162N, Range 71W, Rolette County, North Dakota (the place to be served), without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction and service. The customer at the place to be served is the Sky Dancer Hotel and Casino. Complaint, ¶ 3; Answer ¶ IV; Martian Affidavit, ¶ 6-9.
4. The place to be served is not located within the corporate limits of any municipality. Complaint ¶ 4; Answer ¶ V.
5. The place to be served is located in North Central's service area. Complaint ¶ 5.
6. The place to be served is presently served by North Central. Complaint ¶ 6; Answer ¶ V.

Otter Tail admitted the central fact alleged by North Central, that Otter Tail threatens to and has begun the construction of an extension of its public utility plant and

system at the place to be served without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction. Complaint, ¶ 3; Answer ¶ IV. Otter Tail's denials (Answer ¶¶ II and VI) of other allegations of fact are meaningless in the context of Otter Tail's motion to dismiss, because all North Central's allegations are deemed admitted for purposes of Otter Tail's motion to dismiss. "We construe the complaint in the light most favorable to the plaintiff, taking as true the well-pleaded allegations in the complaint." Ziegelmann v. DaimlerChrysler Corp. 2002 N.D. 134, ¶ 5; 649 N.W.2d 556. Otter Tail's brief (p. 3-4) cites and quotes this same case and paragraph regarding principles applied on a motion to dismiss.

As a result of presenting matters outside the pleadings, motion exhibits A and B, Otter Tail's motion for dismissal under N.D.R.Civ.P. Rule 12(b)(6) must be treated as a motion for summary judgment under Rule 56. See N.D.R.Civ.P. Rule 12 (d); see also Zutz v Kamrowski, 2010 ND 155, ¶ 8, cited in Otter Tail's brief, p. 4. If there are no genuine issues as to material facts, judgment may be entered as a matter of a law. N.D.R.Civ.P. Rule 56(c).

Otter Tail's motion exhibits A and B appear to show as matters of fact that the place to be served is a Tribal owned business located on land owned by the United States as "trust land." Exhibit A lacks appropriate foundation and is inadmissible. Both exhibits are inadmissible for the more important reason that the facts asserted are not material facts affecting the issues of law under North Central's complaint and Otter Tail's answer and motion. Not material because Otter Tail lacks "standing."

The Territorial Integrity Act

S.L. 1965, Ch. 319, codified as N.D.C.C. §§ 49-03-01 through 49-03-01.5 provides ". . . limitations on electric public utilities serving customers in designated areas. The designated areas are those areas "beyond or outside of the corporate limits of any municipality." N.D.C.C. § 49-03-01.1. The "electric public utilities" limited by the 1965 law are privately owned suppliers of electricity, such as Otter Tail. N.D.C.C. § 49-03-01.5. This statute is commonly called the Territorial Integrity Act. Montana-Dakota Utilities Co. v. Johanneson, 153 N.W.2d 414, 418 (N.D. 1967).

The Territorial Integrity Act provides two limitations on electric public utilities, a limitation on construction and a limitation on service. Under the Act, an electric public utility may not construct an extension of its plant, system, transmission or distribution lines and may not serve any customer outside the limits of any municipality without first obtaining from the Commission an order authorizing such extension and service and a certificate that public convenience and necessity require that permission be given to extend such lines to serve such customer. N.D.C.C § 49-03-01.1.

Otter Tail denies that a Certificate of Public Convenience and Necessity is required to extend its facilities to supply electric service to a customer in a rural area. Otter Tail asserts it is immune from the Commission's jurisdiction under the Act, immune because "the Public Service Commission does not have regulatory authority over the Tribe's determination of who will provide electric service to a Tribally owned facility on Tribal land located on the Turtle Mountain Reservation...." Answer ¶ XI. This theory is repeated in slightly different words in Otter Tail's motion.

Customer Preference

"Customer preference" is a factor in cases under the Territorial Integrity Act.

Before adoption of the Territorial Integrity Act, territorial disputes were usually settled by the customer's choice. See Capital Elec. Coop., Inc. v. Public Service Commission of State of North Dakota, 534 N.W.2d 587, 589 (N.D. 1995) and Cass County Elec. Coop. v. Otter Tail Power Co., 93 N.W.2d 47, 50 (N.D. 1958) (". . . since it is in the territory served by both, the customer could choose which service he wanted.").

After adoption of the Territorial Integrity Act, customer choice or preference has a different status in cases where a customer requests an electric public utility to extend its service into a rural area served by a rural electric cooperative.

> ". . . [C]ustomer preference does not govern the Commission in its decision but subjects the customer's preference for a regulated public utility service to an inquiry and decision by the Commission on the question of public convenience and necessity."

Application of Montana-Dakota Utilities Co., 219 N.W.2d 174, 181 (N.D. 1974).

In the electric public utilities' constitutional challenge to the Territorial Integrity Act in 1963, they argued that the potential of customers' preference for regulated utilities' service in rural areas had status as a constitutional right. The Supreme Court's answer was:

> ". . . the contention that the law disregards customer preference is without merit."

Montana-Dakota Utilities Co. v. Johanneson, 153 N.W.2d at 423.

The claimed constitutional status of customer preference was also considered in 1974 in Application of Montana-Dakota Utilities Co., 219 N.W.2d 174. In that case, the customer took an active role as a party, claiming "a constitutional right to receive electric

power from a regulated public utility when he so chooses." 219 N.W.2d at 179. The Court reiterated there is no such constitutional right.

In another of the early cases under the new Territorial Integrity Act, Otter Tail argued the customer's preference to be served by it should determine that a certificate of public convenience and necessity should be granted. The Court said:

> "While under circumstances as here presented customer preference should be considered, there are a number of other factors which also must be considered in determining whether the application of Otter Tail for a certificate of public convenience and necessity should be granted."

Application of Otter Tail Power Co., 169 N.W.2d 415, 418 (N.D. 1969). The status of customer preference was further explained in another Otter Tail case:

> "While we have previously said that customer preference should be considered, we never have held that it is controlling . . . . In rural areas, our decisions indicate, customer preference is a minor consideration . . . . Customer preference, therefore, invokes consideration by the Public Service Commission, but it is not to be a controlling factor . . . . It is the *public* convenience and necessity, after all, with which the Commission is concerned, not private preference."

Tri-County Elect. Coop., Inc. v Elkin, 224 N.W.2d 785, 792 (N.D. 1974).

The most recent Supreme Court case under the Territorial Integrity Act involving Otter Tail reiterated and reinforced the Public Service Commission's prominent authority to control an electric public utility's construction of an extension of its plant and system and the minor status of customer preference.

> "[T]he Territorial Integrity Act implicitly gives preference to the interests of the public in general over the preference of a particular electric customer to have a certain supplier furnish it with electricity."

Application of Otter Tail Power Co., 451 N.W.2d 95, 105 (N.D. 1990) (herein referred to as "Otter Tail 1990").

Otter Tail's Affirmative Defense and Motion to Dismiss

Otter Tail asserts that the Turtle Mountain Band of Chippewa Indians ("the Tribe") has a controlling customer preference for electric service at the Sky Dancer Casino to be furnished by Otter Tail. Otter Tail does not assert the Tribe's preference is a controlling factor in the Public Service Commission's determination of public convenience and necessity under the Territorial Integrity Act. Otter Tail makes a different assertion, that the Tribe's preference immunizes Otter Tail from the Public Service Commission's jurisdiction under the Territorial Integrity Act. ". . . OTP specifically denies that a certificate of public convenience and necessity is required to supply electric service to the Tribe's facility located on Tribal Trust land on the Turtle Mountain Reservation." and "OTP affirmatively asserts the Public Service Commission does not have regulatory authority over the Tribe's determination of who will provide electric service to a Tribally owned facility on Tribal land located on the Turtle Mountain Reservation...." Answer ¶¶ IV and XI. Otter Tail cites Devils Lake Sioux Indian Tribe v. North Dakota Public Service Commission, 896 F.Supp. 955 (D.N.D. 1995) in support of its position. That case is referred to as Devils Lake Sioux v PSC.

Otter Tail Lacks Standing to Assert the Sovereign Immunity Defense

The sovereign immunity defense was asserted and rejected in Otter Tail 1990. In that case, Otter Tail filed a "Notice of Intent to Extend Service" to a customer on the Fort Totten Indian reservation. In response, the Commission notified Otter Tail that the Commission had jurisdiction and Otter Tail should formally apply for a certificate of public convenience and necessity. Otter Tail did apply for a certificate but before the Commission acted Otter Tail extended service in defiance of the Commission's

jurisdiction. In its 1990 case, Otter Tail asserted the Commission did not have jurisdiction because assumption of jurisdiction would unlawfully interfere with the Indian tribe's sovereign rights of self-government. Otter Tail appealed the Commission's decision that it had jurisdiction. The North Dakota Supreme Court decided that Otter Tail did not have "standing" to defeat the PSC's authority over Otter Tail's activities. Assuming Otter Tail had standing to assert the immunity defense, the court addressed the immunity defense and concluded that the Commission did have jurisdiction.

> "Otter Tail asserted that assumption of jurisdiction by the PSC would unlawfully interfere with the Tribe's sovereign rights of self-government. However, because the Tribe (which did not appear) was the proper party to press the potential of harm to its governmental interests, we conclude that Otter Tail had no standing to advance the Tribe's self-government interests.
>
> . . .
>
> "We conclude Otter Tail could not assert the self-government interests of the Tribe to defeat the PSC's authority over Otter Tail's activities.
>
> . . .
>
> "Even assuming that Otter Tail had standing to assert the self-government interests of the Tribe, we nevertheless conclude that the PSC had jurisdiction in this case." Otter Tail 1990, 451 N.W.2d at 97-98.

Otter Tail attempts to avoid the Otter Tail 1990 precedent that rejected the same defense it now asserts in 2011 by arguing "...the Otter Tail (1990) opinion was overruled by the subsequent appellate history and is no longer good law." (Otter Tail Brief, p.7). Otter Tail 1990 was decided by the highest court of North Dakota and was not appealed to the only court with appellate jurisdiction, the United States Supreme Court. Otter Tail 1990 was the subject of collateral attack litigation in Federal District Court, litigation incompletely described in Otter Tail's brief.

After the Otter Tail 1990 decision, the Devils Lake Sioux Tribe enacted a Tribal

Utilities Code purporting to install a comprehensive utility regulation regime on the reservation including the regulation of electric service areas and 4 related actions were commenced in federal district court. 1) Baker Electric Cooperative challenged the Devils Lake Sioux Tribe's jurisdiction to regulate electric service on the reservation and sought an injunction against enforcement of the Tribal Utilities Code; 2) Sheyenne Valley Electric Cooperative commenced a separate action like Baker's because Sheyenne had similar interests in parts of the Fort Totten Reservation; 3) the Devils Lake Sioux Tribe sought an injunction against the PSC's interference with the Tribe's choice of electric suppliers; 4) Otter Tail sought an injunction action against the PSC's interference with the Tribe's choice of electric suppliers. The district court's actions on the several cases are unpublished but were described in a subsequent published opinion, Devils Lake Sioux v PSC, 896 F.Supp at 956. The four district court cases were consolidated and appealed. The 8th Circuit Court remanded "with instructions to the district court to make detailed factual determinations and set out its analysis in support of its legal determinations." Baker Electric Cooperative, Inc. v Chaske, 28 F.3d 1466, 1476. (8th Cir. 1994.) The district court did so. The final decision was "... the Tribe may by resolution or contract determine who is to supply electrical service to Tribal owned businesses located upon Indian owned or trust lands, without regard to the rate structure or other regulations of the North Dakota Public Service Commission...." and "The promulgation and enforcement of a reservation wide utility regulation scheme, without regard to land ownership, occupancy or use is beyond the sovereign authority of the tribe – under the fact specific situation present here." Devils Lake Sioux v PSC, 896 F. Supp. at 961-62. That decision was not appealed by any of the several parties.

In the collateral litigation in federal court, the Tribe had standing and asserted – successfully - the sovereignty issue that Otter Tail lacked standing to assert. The name of the litigation makes it plain; the party with standing, the Tribe, asserted its sovereignty. The federal court litigation did not "overrule" the North Dakota Supreme Court's decision quoted above and repeated here, that Otter Tail lacks standing.

> "Otter Tail asserted that assumption of jurisdiction by the PSC would unlawfully interfere with the Tribe's sovereign rights of self-government. However, because the Tribe (which did not appear) was the proper party to press the potential of harm to its governmental interests, we conclude that Otter Tail had no standing to advance the Tribe's self-government interests.
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> . . .
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> "Otter Tail could not assert the self-government interests of the Tribe to defeat the PSC's authority over Otter Tail's activities." Otter Tail 1990, 451 N.W.2d at 97-98.

In this case, Otter Tail lacks standing to assert the Public Service Commission lacks jurisdiction over service to the Sky Dancer Casino under sovereign immunity concepts. Otter Tail has no sovereign immunity and it is not the Tribe's surrogate to assert sovereign immunity on behalf of either Otter Tail or the Tribe. Sovereign immunity may be asserted only by the Tribe, not by Otter Tail.

Standing is a threshold issue. Otter Tail cannot pass the threshold. The Turtle Mountain Band might assert sovereign immunity, but Otter Tail cannot assert the Tribe's interests to defeat the Public Service Commission's authority over Otter Tail's activities. Otter Tail 1990.

The Tribe is not a party to this action asserting immunity on its own behalf or on behalf of Otter Tail. The Tribe's resolution, Otter Tail's motion exhibit B, does not amount to an appearance. Otter Tail 1990, 451 N.W.2d at 97. The Tribe has not

asserted a power to immunize Otter Tail or to supersede the Public Service Commission's exercise of its jurisdiction over Otter Tail's activities.

The standing argument might appear to be a legal technicality. It is. It is an important technicality. Parties to litigation may present their claims and defenses, not the claims and defenses of non-parties. This fundamental principle is particularly important in cases involving issues of Constitutional Law such as are involved in Otter Tail's assertions of Tribal sovereignty. Whatever words are used to describe the Tribe's status vis-à-vis the North Dakota Public Service Commission – sovereignty, pre-emption, exemption, limitation, immunity, privilege, self government, or any other label – the Tribe's special status is founded in the supremacy clause of Article VI of the United States Constitution, a fundamental principle infusing both North Dakota's Supreme Court's decision in Otter Tail 1990 and all the federal courts' opinions in the collateral litigation post Otter Tail 1990. The special status is the Tribe's, not Otter Tail's. Otter Tail has no special status under Article VI vis-à-vis the North Dakota Public Service Commission and the Territorial Integrity Act. Another principle is involved. Courts (and agencies) abstain from addressing constitutional questions that are unnecessary to be addressed. The two principles coalesce in a single expression: A litigant may assert only its own constitutional rights. See Bismarck v Materi, 177 N.W. 2d. 530, 545 (N.D. 1970). See also N.D.C.C. 28-32-46(2); if Otter Tail were to appeal an adverse decision of the Commission, Otter Tail could assert only "its" constitutional rights.

Otter Tail cannot pass the standing threshold. Absent the Tribe's intervention in this proceeding to assert the Commission lacks jurisdiction over the Tribe's preference for electric service from Otter Tail - despite issues of public convenience and necessity

and despite Otter Tail's interference with North Central's service - Otter Tail's motion to dismiss should be denied.

Summary Judgment Should Be Entered Against Otter Tail

Otter Tail's motion to dismiss under N.D.R. Civ. Proc. Rule 12(b) must be treated as a motion for summary judgment under Rule 56 as a result of Otter Tail's presenting materials outside the pleadings. Rule 12 (d). Under Rule 56(c), "The judgment sought shall be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Summary judgment, when appropriate, may be entered against the moving party."

Otter Tail's only basis for its affirmative defense and motion to dismiss is a theory of sovereign immunity, a theory that Otter Tail lacks standing to assert under Otter Tail 1990. Under the Territorial Integrity Act, all the precedents and particularly Otter Tail 1990, the moving party is not entitled to judgment as a matter of law to dismiss the complaint.

Otter Tail admitted the central fact alleged by North Central, that Otter Tail threatens to and has begun the construction of an extension of its public utility plant and system at the place to be served without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction. Complaint, ¶ 3; Answer ¶ IV. That admission shows there is no genuine issue as to the central material fact. Because material facts are undisputed, it is appropriate for summary judgment to be entered against Otter Tail under Rule 56(c). See Spier v. Power Concrete, 304 N.W.2d 68, 72 (N.D. 1981).

If The Tribe Were To Intervene The Case Cannot Be Resolved Under Rule 56

If the Tribe were to intervene, there would be material issues of fact. The Tribe and Otter Tail would need to successfully perform "the fact specific tap dance that is required whenever Tribal sovereignty issues are raised." Devils Lake Sioux v PSC, 896 F.Supp at 960. The Tribe's sovereign power to contract with whomever it will for the provision of electric service to its lands and businesses "may be an illusory power as any supplier must cross non-reservation areas to get power to the reservation, and must therefore be under North Dakota Public Service Commission jurisdiction until either the reservation boundary or the actual facility is reached." Devils Lake Sioux v PSC, 896 F.Supp. at 957.

North Central's Complaint and affidavit to establish a prima facie case include information that OTP's construction crossed North Dakota's Highway 5. North Dakota's highway right of way must be under North Dakota Public Service Commission jurisdiction over OTP's construction. See Martian affidavit § 9, and exhibit A attached to this brief. OTP's construction to get power to the Sky Dancer Casino would be material facts if the Tribe were to intervene.

If the Tribe were to intervene, the particular business of the Sky Dancer Casino would be a material issue of fact affecting the Tribe's assertion of sovereign immunity to contract with whomever it will for the provision of electric service to this particular location and business. Under the Gaming Compact between the Tribe and the State of North Dakota, the sovereign immunity issue is addressed, including the State's retention of its jurisdiction. See exhibit B attached to this brief, § 17.2.

(As noted above, in Otter Tail 1990 the North Dakota Supreme Court assumed Otter Tail had standing to assert the immunity defense, addressed the immunity defense and concluded that the Commission did have jurisdiction. If it were to be assumed in this case that Otter Tail has standing to assert the immunity defense, the case cannot be resolved under Rule 56 because of these material issues, "the fact specific tap dance that is required whenever Tribal sovereignty issues are raised." Devils Lake Sioux v PSC,896 F.Supp at 960.)

CONCLUSION

Under precedents of the Commission and of the North Dakota Supreme Court, the Public Service Commission does not take a narrow view of its jurisdiction under the Territorial Integrity Act. See Capital Elect. Coop.v. Montana-Dakota Utilities Co., PSC Case No. PU-05-551, Order ¶ 10, affirmed at Capital Elec. Coop. v. City of Bismarck, 2007 N.D. 128, 736 N.W.2d 788. Under the Territorial Integrity Act, the Commission has jurisdiction and authority over Otter Tail's activities alleged in North Central's complaint and admitted in Otter Tail's answer.

Under Otter Tail's admission (Answer ¶ IV), Otter Tail's construction of an extension of its public utility plant and system to serve the Sky Dancer Hotel and Casino without first obtaining from the Commission an order authorizing such extension and service and a certificate that public convenience and necessity require that permission be given to extend such lines to serve such customer is a violation of North Dakota Century Code Section 49-03-01.1.

Otter Tail lacks standing to assert the Public Service Commission lacks jurisdiction over service to the Sky Dancer Casino under sovereign immunity concepts.

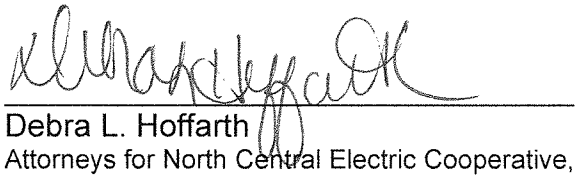
Otter Tail has no sovereign immunity and it is not the Tribe's surrogate to assert sovereign immunity on behalf of either Otter Tail or the Tribe. Sovereign immunity may be asserted only by the Tribe, not by Otter Tail. Otter Tail has no standing to assert the Tribe's sovereignty to defeat the PSC's authority over Otter Tail's activities. Otter Tail 1990, 451 N.W.2d at 98. If the Tribe were to intervene, the case cannot be resolved under Otter Tail's motion.

The Commission should assert and exercise its jurisdiction over Otter Tail's activities under the Territorial Integrity Act and all the precedents from Montana-Dakota v. Johanneson in 1967 through Capital v. Bismarck in 2007, and particularly Otter Tail 1990.

The Commission should deny Otter Tail's motion to dismiss and enter its order under N.D.C.C. §§ 49-03-01.4 and 49-03-05 and N.D.R.Civ.P. Rule 56 restraining Otter Tail from serving the Sky Dancer Casino in Rolette County and enjoining it to dismantle its extension of its electric public utility plant and system that it constructed without first obtaining an order from the Commission authorizing such extension and service.

Dated this 2nd day of February, 2012.

PRINGLE & HERIGSTAD, P.C.



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DOT PROJECT # NH-3-281(032)232

Tribal Land T-44

Allotted Land 1434, 709, 1222-D, 5100-E, 5100-F & 5100-B

Government Land

Realty R/W File No. 375(99)

GRANT OF EASEMENT FOR RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENT:

That the United States of America, acting by and through the Superintendent, Turtle Mountain Agency, Bureau of Indian Affairs, Department of the Interior, Belcourt, North Dakota 58316 hereinafter referred to as "GRANTOR", under authority contained in Order No. 2508 of Secretary Interior (14 FR 258) and 10 BIAM (34 FR 637) and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), and Part 169, Title 25, Code of Federal Regulations, in consideration of the amount of $1,411.66, receipt of which is acknowledged, does hereby grant to the Applicant NORTH DAKOTA DEPARTMENT OF TRANSPORTATION, its successors and assigns, hereinafter referred to as "GRANTEE", and easement for right-of-way for the following purpose(s), namely:

Purpose of right-of-way: REGRADE AND WIDEN EXISTING U.S. HIGHWAY 281, on, over, under, and across the land embraced within the right-of-way situated on the following described lands located within the Turtle Mountain Reservation, County of Rolette, State of North Dakota:

PARCEL 1-3,	ID. T-44	34-162-71, SE¼
PARCEL 1-4,	ID. 1222-D	34-162-71, SE¼SW¼
PARCEL 5A-2,	ID. 5100-B	21-162-70, E½E½E½NE¼NE¼
PARCEL 5A-5,	ID. 5100-E	21-162-70, W½E½E½NE¼NE¼
PARCEL 5A-6,	ID. 5100-F	21-162-70, E½E½E½NE¼NE¼
PARCEL 6-7,	ID. 709	22-162-70, W½NW¼
PARCEL 6-8,	ID. 1434	15-162-70, SW¼SW¼
PARCEL 6-11,	ID. 709	22-162-70, W½NW¼

EXHIBIT A

NF - Dept of Transpo.

The said easement, as shown on the tract map attached hereto, is limited to and more particularly described as (show in length, width, and acreage):

SEE SURVEY PLATS FOR THE FOLLOWING PARCELS LENGTHS & WIDTHS:

PARCEL 1-3, 0.44 ACRES

PARCEL 1-4, 0.25 ACRES

PARCEL 5A-2, 0.27 ACRES

PARCEL 5A-5, 0.25 ACRES

PARCEL 5A-6, 0.08 ACRES

PARCEL 6-7, 0.30 ACRES

PARCEL 6-8, 0.12 ACRES

PARCEL 6-11, 0.06 ACRES

This easement is subject to any prior valid existing right or adverse claim and is for the period of PERMANENT so long as said easement shall be actually used for the purpose above specified: PROVIDED, that this right of way shall be terminated in whole or in part by the GRANTOR for any of the following causes upon 30 days' written notice and failure of the GRANTEE within said Notice period to correct the basis of termination (25 CFR 169.20);

A. Failure to comply with any term or condition of the grant or the applicable regulations;

B. A nonuse of the right-of-way for a consecutive 2 year period for the purpose for which it was granted;

C. An abandonment of the right-of-way;

D. Failure of the Grantee, upon completion of construction, to file with the GRANTOR an affidavit of completion pursuant to 25 CFR 169.16;

E. Failure to contact the BIA Roads Department on any excavation or construction involving the road or road right-of-way, will be cause for revocation of permit.

The condition of this easement shall extend to and be binding upon and shall insure to the benefit of the successors and assigns of the Grantee.

IN WITNESS WHEREOF, Grantor has executed this Grant of Easements this 5 day of June, 19 97.

UNITED STATES OF AMERICA
U.S. Department of the Interior
Bureau of Indian Affairs
Turtle Mountain Agency
Belcourt, North Dakota 58316

By: Kenneth W Davis
Superintendent & Grantor

I certify that the requirements for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision e of subsection 6 of NDCCSS 11-18-02.2.
NORTH DAKOTA DEPT. OF TRANSPORTATION

Kenneth E Birst
KENNETH E. BIRST Date 6-18-97
Design Engineer
Grantee or Agent

REGISTER OF DEEDS ROLETTE COUNTY SEAL STATE OF NORTH DAKOTA

State of North Dakota, Rolette County, N. D. } ss.
I hereby certify that the within instrument was filed in this office for record on the 20th day of June A.D. 1997 at 11:45 o'clock A. M. and was duly Recorded in Book 55 of Miscellaneous Page 441-44
Colleen J. Bertsch
Register of Deeds
By ..... Deputy.

0443

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amended Gaming Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amended Gaming Compact between the Turtle Mountain Band of Chippewa Indians and the State of North Dakota, which was executed on September 29, 1999.

DATES: This action is effective November 12, 1999.

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

Dated: October 25, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

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EXHIBIT

B

AMENDED GAMING COMPACT
BETWEEN THE
TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS
AND THE
STATE OF NORTH DAKOTA

This Amended Gaming Compact ("Amended Compact") is made and entered into this 29th day of September, 1999, by and between the Turtle Mountain Band of Chippewa Indians, (hereinafter referred to as the "Tribe") and the State of North Dakota (hereinafter referred to as the "State").

I. RECITALS.

The Tribe is a federally recognized Indian Tribe, organized pursuant to the Constitution and By-Laws of the Turtle Mountain Band of Chippewa Indians, approved by the Secretary of the Interior on June 16, 1959, as amended thereafter, with its headquarters at Belcourt, North Dakota. Pursuant to Article VI of the Tribal Constitution, the Tribal Council is the governing body of the Tribe with constitutional and federal statutory authority to negotiate with state and local governments.

The State, through constitutional provisions and legislative acts, has authorized games of chance and other gaming activities, and the Congress of the United States, through the Indian Gaming Regulatory Act, Public Law 100-407, 102 Stat. 2426, 25 U.S.C. §2701 et seq. (1988) (hereinafter referred to as the "IGRA"), has authorized the Tribe to operate Class III gaming pursuant to a tribal gaming ordinance approved by the National Indian Gaming Commission and a Compact entered into with the State for that purpose. Pursuant to its inherent sovereign authority and the IGRA, the Tribe intends to continue presenting Class III gaming, and the Tribe and State negotiated a Compact under the provisions of the IGRA to authorize and provide for the operation of such gaming. Said Compact was executed on October 7,1992, by the then serving Tribal Chairman on behalf of the Tribe and the then serving Governor on behalf of the State and became effective when thereafter approved by the United States Secretary of Interior and publicized in the Federal Register. Said Compact provides for Amendment upon agreement by both parties. The parties believe that amendment at this time would be appropriate.

NOW THEREFORE, in consideration of the covenants and agreements of the parties herein below, the Tribe and the State agree as follows:

II. POLICY AND PURPOSE.

The Tribe and the State mutually recognize the positive economic benefits that gaming may provide to the Tribe and to the region of the State adjacent to Tribal lands, and the Tribe and the State recognize the need to insure that the health, safety and welfare of the public and the integrity of the gaming industry of the Tribe and throughout North Dakota be protected. In the spirit of cooperation, the Tribe and the State hereby agree to carry out the terms of the IGRA regarding tribal Class III gaming.

The Tribal Gaming Code and regulations of the Tribal Gaming Commission (hereinafter referred to collectively as "Tribal Law"), this Compact, and the IGRA shall govern all Class III gaming activities, as defined in the IGRA. The purpose of this Compact is to provide the Tribe with the opportunity to license and regulate Class III gaming to benefit the Tribe economically.

III. AUTHORIZED CLASS III GAMING.

3.1 **Kinds of Gaming Authorized.** The Tribe shall have the right to operate upon Tribal trust lands within the exterior boundaries of the Turtle Mountain Reservation, and the lands and waters identified in Section XXXIII below, the following Class III games during the term of this Compact, pursuant to Tribal Law and Federal Law, but subject to limitations set forth within this Compact.

A. Electronic games of chance with video facsimile displays. Machines featuring coin drop and payout, and machines featuring printed tabulations shall both be permitted;

B. Electronic games of chance with mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence or lack thereof, of a winning combination and pay out, if any. Machines featuring coin drop and payout, and machines featuring printed tabulations shall both be permitted;

C. Blackjack; and similar banking card games;

D. Poker; including Pai Gai Poker and Caribbean Stud Poker;

E. Pari-mutuel and simulcast betting pursuant to the separate pari-mutuel horse racing addendum to Gaming Compact between the parties executed on April 8, 1993, and thereafter approved by the United States Secretary of Interior. This amended compact shall control any inconsistencies between the addendum and this compact;

F. Sports and Calcutta pools on professional sporting events as defined by North Dakota law, except as to bet limits and except that play may be conducted utilizing electronic projections or reproductions of a sports pool board;

G. Sports Book except as prohibited by the Professional and Amateur Sports Protection Act, P.L. 102-559; 28 U.S.C. Chap. 178, Pt. VI;

H. Pull-tabs or break-open tickets when not played at the same location where bingo is being played, subject to the limitations set forth at Section 3.4, below;

I. Raffles;

J. Keno;

K. Punchboards and jars;

L. Paddlewheels;

M. Craps and Indian Dice;

N. All games of chance and/or skill, other than those subject to Section 3.3 of this Compact, authorized to be conducted by any group or individual under any circumstances within the State of North Dakota, rules of play to be negotiated in good faith by the parties hereto;

O. Roulette, and similar games, whether played conventionally or electronically; and

P. Slot Tournaments, whether or not a fee is charged, in which players use designated electronic games of chance machines, whether equipped with video facsimile displays or mechanical rotating reels, that are equipped with special tournament EPROM chips, and are set to not receive coins during tournament play and which do not make printed tabulations during tournament play, in which the player competes against other players for a specified prize or prizes based on accumulated points as determined by the machine. The Tribe shall adequately account for slot tournament revenues.

3.2 **Limits of Wagers.** The Tribe shall have the right to operate and/or conduct authorized Class III gaming with individual bet maximum wagers to be set at the discretion of the Tribe, except that maximum wagers shall not exceed those set forth herein.

A. Wagers on blackjack may not exceed One hundred and no/100 dollars ($100.00) per individual bet. However, the Tribe may designate no more than two (2) tables on which wagers may not exceed Two Hundred Fifty and no/100 ($250.00) dollars per individual bet. Such tables shall be physically segregated, separately identified, and concurrently operative no more than twelve (12) hours per day.

B. Wagers on poker shall not exceed Fifty and no/100 dollars ($50.00) per individual bet per round, with a three raise maximum per round.

C. Bets on paddlewheels, whether individual or multiple, shall not exceed Fifty and no/100 dollars ($50.00) by any individual player per spin of the wheel.

D. Individual bets placed during the play of craps shall not exceed Sixty and no/100 ($60.00) dollars per bet. A player may lay "true odds don't bets" to win no more than monies placed into play by the player during an individual game. Each game shall be attended by at least a two-person team, and normally by a three-person team, and overseen by at least one other non-participant supervisor who may oversee more than one game. Surveillance cameras shall not be considered a member of the three-person team.

E. The aggregate bets placed during the play of Indian dice shall not exceed an amount equal to One hundred and no/100 dollars ($100.00) multiplied by the number of players. Each game shall be attended by at least a two-person team, and normally by a three-person team, and overseen by at least one other non-participant supervisor who may oversee more than one game.

F. Electronic games of chance may not process individual bets in excess of Twenty-five and no/100 ($25.00) dollars per bet. However, play may be conducted upon individual machines which process simultaneously any number of bets, so long as the total of all bets does not exceed Twenty-five and no/100 dollars ($25.00).

G. Bets on Roulette shall not exceed Fifty and no/100 dollars ($50.00) where a player places a single bet per spin of the wheel. Players may, however, place a series of non-duplicate individual bets of no more than Five and no/100 dollars ($5.00) each per spin of the wheel.

3.3 **Availability of Additional Games and Bet Limits Legally Conducted by Other Tribes.** All games and/or increased wager limits which any other Indian Tribe may legally conduct, or utilize, on trust lands located within North Dakota, whether by compact with the State, or through action by the United States Secretary of Interior, or determination of any court maintaining jurisdiction, shall be available for play by Tribe subject to the following: The State may condition play upon the provision by Tribe of consideration similar or equivalent to that provided by another compacting Tribe. Upon identification by Tribe of any such game, and written notice to State, the parties shall within fourteen (14) days commence good faith negotiations as to the inclusion of such additional game or games, consideration by the Tribe, if applicable, rules of play and presentation thereof. Such negotiations shall proceed with deliberate speed and attention.

3.4 **Limits on Conduct of Pull-Tabs.** Pull tabs and/or break-open tickets when conducted as Class III gaming shall be conducted in accordance with standards and limitations then currently established under North Dakota State Law for the conduct of similar games, within the State of North Dakota. This Compact, as to pull-tabs and break-open games only, shall be deemed to be revised simultaneously with any revisions of North Dakota law as to the conduct of pull-tabs or break-open tickets to incorporate within the Compact, as applicable to Tribe, any such revisions.

Further, and in addition to the limitations set forth above, pull-tabs shall be dispensed only by machines that incorporate devices to tabulate machine activity.

The Tribe shall voluntarily comply with the above criteria in its conduct of all pull-tabs and break-open games. Should it not do so, it is agreed by the parties that the Tribe under the terms of this Agreement shall not be authorized to conduct any Class III pull-tabs or break-open ticket sales and shall not do so.

3.5 **No Machine or Table Limit.** There shall be no limit on the number of machines, tables, or other gaming devices which the Tribe may operate pursuant to this Compact, nor shall there be a limit as to number of sites on trust lands upon which gaming may be offered.

3.6 **Technology Advancements.** It is the desire of Tribe and of State to permit games authorized at Section 3.1 above to be conducted at the Tribe's option in a manner incorporating such advancement of technology as may be available. At the request of either party, State and Tribe shall meet to discuss such application.

3.7 **New Games.** At the request of either party, Tribe and State shall meet to discuss introduction of new games and appropriate rules of play along with the appropriateness and/or necessity of the Amendment of this Compact to permit such play.

3.8 **Inflation or Deflation.** At the request of either party, the Tribe and the State shall meet to discuss adjustment of betting limits to address economic inflation or deflation.

IV. TRIBAL LAW.

4.1 **Gaming Code.** The Tribe has adopted a Tribal Code, entitled "Gaming", and shall adopt regulations of the Tribal Gaming Commission pursuant thereto. Such Tribal Law shall be, and shall remain after any amendment thereto, at least as stringent as those specified in the Indian Gaming Regulatory Act and this Compact, and, with the exception of wagering limits and banking card games, those statutes and administrative rules adopted by the State of North Dakota to regulate those games of chance as may be authorized for play within the State of North Dakota, generally. The Tribe shall furnish the State with copies of such Tribal Law, including all amendments thereto.

4.2 **Incorporation.** The Gaming Code of the Tribe, as it may be from time-to-time amended, is incorporated by reference into this Compact.

V. TRIBAL REGULATION OF CLASS III GAMING.

5.1 **Tribal Council to Regulate Gaming.** The Tribal Council of the Tribe ("the Council") shall license, operate and regulate all Class III gaming activities pursuant to Tribal Law, this Compact, and the IGRA, including, but not limited to, the licensing of consultants, primary management officials and key employees of each Class III gaming activity or operation, and the inspection and regulation of all gaming devices. Any discrepancies in any gaming activity or operation and any violation of Tribal Law, this Compact or IGRA shall be corrected immediately by the Tribe pursuant to Tribal Law and this Compact.

5.2 **Tribal Gaming Commission.** The Tribal Gaming Commission, appointed pursuant to the Tribal Law and Order Code (hereinafter referred to as the "Tribal Commission"), shall have primary responsibility for the day-to-day regulation of all tribal gaming activities of operations, pursuant to delegation of authority by the Council, including licensing of all gaming employees.

5.3 **Regulatory Requirements.** The following regulatory requirements shall apply to the conduct of Class III gaming. The Tribe shall maintain as part of its lawfully enacted ordinances, at all times in which it conducts any Class III gaming, requirements at least as stringent as those set forth herein.

A. Odds and Prize Structure. The Tribe shall publish the odds and prize structure of each Class III game, and shall prominently display such throughout every gaming facility maintained by the Tribe.

B. No credit extended. All gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by the gaming facility operated within the Reservation, and no operation shall permit any person or organization to offer such credit for a fee. This restriction shall not restrict the right of the Tribe or any other person or entity authorized by the Tribe to offer check cashing or to install or accept bank card, or credit card or automatic teller machine transactions in the same manner as would be normally permitted at any retail business within the State. The Tribe shall adopt check-cashing policies and advise the State of such policies.

C. Age Restrictions.

(i) No person under the age of 21, except for military personnel with military identification, may purchase a ticket, other than a raffle ticket, make a wager, or otherwise participate in any Class III game; provided that this section shall not prohibit a person 21 years old or older from giving a ticket or share to a person under the age of 21 as a gift.

(ii) No person under the age of 21, except employees performing job-related duties, shall be permitted on the premises where any component of Class III gaming is conducted, unless accompanied by a parent, guardian, spouse, grandparent, or great-grandparent over the age of 21, sibling over the age of 21, or other person over the age of 21 with the permission of the minor's parent or guardian; provided that this subsection shall not apply to locations at which sale of tickets is the only component of Class III gaming. This section shall not limit the presence of individuals under the age of 21 within areas of gaming facilities conducting only Class II gaming, or exclusively providing activities other than Class III gaming such as food service, concerts, and gift items.

D. Player Disputes. The Tribe shall provide and publish procedures for impartial resolution of a player dispute concerning the conduct of a game, which shall be made available to customers upon request.

VI. COMPLIANCE.

6.1 **Report of Suspected Violation by Parties.** The parties hereto, shall immediately report any suspected violation of Tribal Law, this Compact, or the IGRA to the Tribal Gaming Commission and to such State official as the State may designate. If the Commission concludes that a violation has occurred, the violation will be addressed by the Commission within five (5) days after receipt of such notice. The Commission shall notify the State promptly as to such resolution.

6.2 **Response to Complaints by Third Parties.** The Tribe shall through its Gaming Commission arrange for reasonable and accessible procedures to address consumer complaints. The Commission shall submit to such State official as the State may designate, a summary of any written Complaint received which addresses a suspected violation of Tribal law, this Compact, or the IGRA, along with specification as to any action or resolution deemed warranted and/or undertaken.

6.3 **Non-Complying Class III Games.** The following are declared to be non-complying Class III Games:

A. All Class III games to which the agents of the State have been denied access for inspection purposes; and

B. All Class III games operated in violation of this Compact.

6.4 **Demand for Remedies for Non-Complying Games of Chance.** Class III games believed to be non-complying shall be so designated, in writing, by the agents of the State. Within five (5) days of receipt of such written designation, the Tribe shall either:

A. Accept the finding of non-compliance, remove the Class III games from play, and take appropriate action to ensure that the manufacturer, distributor, or other responsible party cures the problem; or

B. Contest the finding of non-compliance by so notifying the agents of the State, in writing, and arrange for the inspection of the contested game, by an independent gaming test laboratory as provided within ten (10) days or the receipt of the finding of non-compliance. If the independent laboratory finds that the Class III game or related equipment is non-complying, the non-complying Class III game and related equipment shall be permanently removed from play unless modified to meet the requirements of this Compact.

VII. DESIGNATED USAGE OF FUNDS.

7.1 The Tribal Council of the Tribe has determined that it is in the interest of the Tribe that designated portions of revenue derived from gaming operations be guaranteed for usage within Tribal programs for economic development, other than gaming, and social welfare. In accordance therewith, at least ten (10%) percent of Net Revenues from Class III gaming operations must be directed to, and utilized within, economic development programs of the Tribe. Net Revenues shall be determined pursuant to the definition set forth within Section 4(9) of the Indian Gaming Regulatory Act according to Generally Accepted Accounting Principles (GAAP) as recognized by the American Institute of certified Public Accountants.

7.2 The parties intend that set aside funds as described herein shall be used for the long-term benefit and improvement of the Tribe and its members and be directed towards long-term economic development activities that will produce lasting returns on usage of these funds.

7.3 Economic development funds shall be used consistent with the following criteria:

(i) Purchase of supplies for the Tribes economic development programs.

(ii) Purchase of equipment of fixtures for the economic development programs.

(iii) Purchase, lease, or improvement of real estate for economic development operations or specific economic development projects.

(iv) Capitalization for economic development projects being pursued by the Tribe.

(v) Improvements to, or purchase towards tribal infrastructure (such as roads, buildings, water supply, waste water treatment, and similar efforts.)

(vi) Funds shall not be used for salaries, or day-to-day operations, or for gaming activities, whether of debt service or otherwise.

(vii) Planning and development of tribal businesses and other economic development activities.

(viii) Economic development grants to tribal members.

7.4 Any member of the Tribe may inspect, during normal business hours, how economic development funds under this section have been used by the Tribe and to inspect annual audits. Such information shall be periodically distributed to the representative body of each District.

VIII. LICENSING.

8.1 **Tribal License.** All personnel employed or contractors engaged by the Tribe, and/or by any Management Agent under contract with the Tribe, whose responsibilities include the operation or management of Class III games of chance shall be licensed by the Tribe.

8.2 **State License.** All personnel employed or contractors engaged by the Tribe and/or by any Management Agent under contract with the Tribe, other and apart from Members of the Tribe, whose responsibilities include the operation or management of Class III games of chance, shall be licensed by the State, should the State maintain applicable licensure requirements.

IX. BACKGROUND INVESTIGATION.

9.1 **Information Gathering.** The Tribe, prior to hiring a prospective employee or engaging a contractor whose responsibilities include the operation or management of Class III gaming activities, shall obtain sufficient information and identification from the applicant to permit the conduct of a background investigation of the applicant.

9.2 **Authorization of Background Investigation.** Any person who applies for a tribal license pursuant to this Compact and Tribal law shall first submit an application to the Tribe which includes a written release by the applicant authorizing the Tribe to conduct a background investigation of the applicant and shall be accompanied by an appropriate fee for such investigation as determined by the Commission pursuant to Tribal law and this Compact.

9.3 **Background Investigation by the Tribe.** Upon receipt of the application and fee, the Commission shall investigate the applicant within thirty (30) days of the receipt of the application or as soon thereafter as is practical. The Commission shall utilize the North Dakota Bureau of Criminal Investigations (BCI) to assist in background investigations, but may utilize any other resource the Tribe determines appropriate.

9.4 **Background Investigations by State Prior to Employment.** The Tribe, prior to placing a prospective employee whose responsibilities include the operation or management of games of chance, shall obtain a release and other information from the applicant to permit the State to conduct a background check on the applicant. This information, along with the standard fee, shall be provided in writing to the state which shall report to the Tribe regarding each applicant within thirty (30) days of receipt of the request or as soon thereafter as is practical. The Tribe may employ any person who represents, in writing, that he or she meets the standards set forth in this section, but must not retain any person who is subsequently revealed to be disqualified. Criminal history data compiled by the State on prospective employees shall, subject to applicable state to federal law, be released to the Tribe as part of the reporting regarding each applicant. The background check of employees and contractors to be conducted pursuant to this paragraph shall be independent of any similar federal requirements.

9.5 **Background Investigations of Employees During Employment.** Each person whose responsibilities include the operation or management of Class III games shall be subject to periodic review by the Gaming Commission comparable to that required for initial employment. This review shall take place at least every two years, commencing with the date of employment. Employees found to have committed disqualifying violations shall be dismissed.

9.6 **State Processing of Tribal Requests.** The State shall process background investigation requests by the Tribe with equal priority as to that afforded requests for background investigations by State Agencies.

9.7 **Investigation Fees.** The applicant shall reimburse the State for any and all reasonable expenses for background investigations required with this Compact.

X. PROHIBITIONS IN HIRING EMPLOYMENT AND CONTRACTING.

10.1 **Prohibitions.** The Tribe may not hire, employ or enter into a contract relating to Class III gaming with any person or entity which includes the provision of services by any person who:

A. Is under the age of 18;

B. Has, within the immediate preceding ten (10) years, been convicted of, entered a plea of guilty or no contest to, or has been released from parole, probation or incarceration, whichever is later in time; any felony, any gambling related offense, any fraud or misrepresentation offense; unless the person has been pardoned or the Tribe has made a determination that the person has been sufficiently rehabilitated.

C. Is determined to have poor moral character or to have participated in organized crime or unlawful gambling, or whose prior activities, criminal record, reputation, habits, and/or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming, or as to the business and financial arrangements incidental to the conduct of gaming. Determinations specified above will be disqualifying as to employment and/or contracting should such, be made by the Tribal Gaming Commission.

10.2 **Dispensing of Alcoholic Beverages.** Tribal employees will comply with State liquor laws with respect to the dispensing of alcoholic beverages.

XI. EMPLOYEES.

11.1 **Procedural Manual.** The Tribe shall publish and maintain a procedural manual for all personnel, which includes disciplinary standards for breach of the procedures.

11.2 **Limitation of Participation in Games by Employees.** The Tribe may not employ or pay any person to participate in any game, (including, but not limited to, any shill or proposition player); except that an employee may participate, as necessary, to conduct a game as a dealer or bank.

XII. MANAGEMENT AGREEMENTS.

12.1 **Option for Tribe.** The Tribe in its discretion may, but in no manner shall be required to enter into a management contract for the operation and management of a Class III gaming activity permitted under this Compact.

12.2 **Receipt of Information by Tribe.** Before approving such contract, the Tribe shall receive and consider the following information:

A. The name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) five (5%) percent or more of its issued and outstanding stock;

B. A description of any previous experience that each person listed has had with other gaming contracts with Indian Tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency which has issued the person a license or permit relating to gaming or with which such person has had a contract relating to gaming; and

C. A complete financial statement of each person listed.

12.3 **Provisions of Management Agreement.** The Tribe shall not enter a management contract unless the contract provides, at least, for the following:

A. Adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the Tribe on a monthly basis;

B. Access to the daily operations of the gaming activities to appropriate officials of the Tribe, who shall also have a right to verify the daily gross revenues and income made from any such Tribal gaming activity;

C. A minimum guaranteed payment to the Tribe, that has preference over the retirement of development and construction costs;

D. An agreed ceiling for the repayment of development and construction costs;

E. A contract term not to exceed five (5) years, except that the Tribe may approve a contract term that exceeds five (5) years but does not exceed seven (7) years if, the Tribe is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time;

F. A complete, detailed specification of all compensation to the Contractor under the contract;

G. Provisions for an early Tribal buy out of the rights of the Management Agent; and

H. Grounds and mechanisms for terminating such contract.

I. At least ten (10%) percent of net revenues, from Class III gaming operations shall be directed to, and utilized within, economic development programs of the Tribe other than gaming. Net Revenues shall be determined according to Generally Accepted Accounting Principles (GAAP).

12.4 **Fee.** The Tribe may approve a management contract providing for a fee based upon a percentage of the net revenues of a Tribal gaming activity, which shall not exceed thirty (30%) percent, unless the Tribe, determines that the capital investment required, and income projections, for such gaming activity, require an additional fee, which in no event shall exceed forty (40%) percent of net revenues of such gaming activity. A contract providing for a fee based upon a percentage of net revenues shall include a provision describing in detail how net revenues will be determined.

12.5 **Background Check.**

A. Prior to hiring a Management Agent for Tribal Class III games, the Tribal Gaming Commission shall obtain release and other information sufficient from the proposed Management Agent and/or its principals to permit the State to conduct a background check. All information requested will be provided in writing to the State which shall conduct the background check and provide a written report to the Tribe regarding each Manager applicant and/or its principals within thirty (30) days of receipt of the request or as soon thereafter as is practical. The background check to be conducted pursuant to this paragraph shall be in addition to any similar federal requirements.

B. The Tribe shall not employ a Management Agent for the Class III games if the State Gaming Commission determines that the Management Agent applicant and/or its principals are in violation of the standards set forth in Section X of this Compact.

XIII. ACCOUNTING AND AUDIT PROCEDURES.

13.1 **Accounting Standards.** The Tribe shall adopt accounting standards, which meet or exceed those standards established in the IGRA.

13.2 **Systems.** All accounting records must be maintained according to Generally Accepted Accounting Principals (GAAP).

13.3 **Audits.** The Tribe shall conduct or cause to be conducted independent audits of every Class III gaming activity or operation. Audits will be conducted at least annually with copies all annual audits to be furnished to the State by the Tribe at no charge.

XIV. TRIBAL RECORD KEEPING.

14.1 **Record Maintenance.** The Tribe shall maintain the following records related to its gaming operations for at least three (3) years.

A. Revenues, expenses, assets, liabilities and equity for each location at which any component of Class III gaming is conducted;

B. Daily cash transactions for each game at each location at which Class III gaming is conducted including but not limited to transactions relating to each gaming table bank, game drop box and gaming room bank;

C. Individual and statistical game records to reflect statistical drop, statistical win, the statistical drop by table for each game, and the individual and statistical game records reflecting similar information for all other games;

D. Records of all tribal enforcement activities;

E. All audits prepared by or on behalf of the Tribe;

F. All returned checks which remain uncollected, hold checks or other similar credit instruments; and

G. Personnel information on all Class III gaming employees or agents, including time sheets, employee profiles and background checks.

14.2 **Accounting Records and Audits Concerning Class III Gaming by Tribe.** The Tribe shall provide a copy to the State of any independent audit report upon written request of the State. Any costs incidental to providing copies to the State will be borne by the Tribe.

XV. ACCESS TO RECORDS.

15.1 The Tribe shall permit reasonable access to review by the State of Tribal accounting and audit records associated with gaming conducted under this Compact. The State may copy such documents as it desires subject to the confidentiality provisions set forth herein below. Any costs incidental to such an inspection shall be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact.

15.2 The Tribe requires that its gaming records be confidential. Any Tribal records or documents submitted to the State, or of which the State has retained copies in the course of its gaming oversight and enforcement, will not be disclosed to any member of the public except as needed in a judicial proceeding to interpret or enforce the terms of this Compact, or except as may be required for law enforcement or tax assessment purposes. Such disclosure, however, shall be conditional upon the recipient making no further disclosure absent authorization by the Tribe or under Court Order. This Compact is provided for by Federal law and therefore supersedes State records law to the contrary.

15.3 The Tribe shall have the right to inspect and copy all State records concerning the Tribe's Class III gaming unless such disclosure would compromise the integrity of an ongoing investigation.

XVI. TAX REPORTING MATTERS.

Whenever required by federal law to issue Internal Revenue Service Form W2G, the Tribe shall also provide a copy of the same to the State. In addition, the Tribe shall comply with employee income withholding requirements for all non-Indian employees and all Indian employees not living on the Reservation, who are not members of the Tribe.

XVII. JURISDICTION, ENFORCEMENT AND APPLICABLE LAW.

17.1 **Criminal Enforcement.** Nothing in this Compact shall deprive the Courts of the Tribe, the United States, or the State of North Dakota of such criminal jurisdiction as each may enjoy under applicable law. Nothing in this Compact shall be interpreted as extending the criminal jurisdiction of the State of North Dakota or the Tribe.

17.2 **Civil Enforcement.** Nothing in this Compact shall deprive the Courts of the Tribe, the United States, or the State of North Dakota of such civil jurisdiction as each may enjoy under applicable law. Nothing in this Compact shall be interpreted as extending the civil jurisdiction of the State of North Dakota or the Tribe.

XVIII. SOVEREIGN IMMUNITY.

18.1 **Tribe.**

A. Nothing in this Compact shall be deemed to be a waiver of the sovereign immunity of the Tribe.

B. Sovereign immunity must be asserted by the Tribe itself and may not be asserted by insurers or agents. The Tribe waives sovereign immunity for personal injury arising out of its gaming activities, but only to the extent of its liability insurance coverage limits.

18.2 **State.** Nothing in this Compact shall be deemed to be a waiver of the sovereign immunity of the State.

XIX. QUALIFICATIONS OF PROVIDERS OF CLASS III GAMING EQUIPMENT OR SUPPLIES.

19.1 **Purchase of Equipment and Supplies.**

A. No Class III games of chance, gaming equipment or supplies may be purchased, leased or otherwise acquired by the Tribe unless the Class III equipment or supplies are purchased, leased or acquired from a manufacturer or distributor licensed by the Tribe to sell, lease, or distribute Class III gaming equipment or supplies, and further unless the gaming manufacturer is licensed to do business in one or more of the following states; Nevada, New Jersey, South Dakota, Colorado, and Mississippi. Should the Tribe wish to purchase equipment on supplies from a business not shown to be licensed to do business in one or more of the above mentioned States, the Tribe may petition the Office of the Attorney General for the State of North Dakota for review and approval of said manufacturer or supplier.

B. Should the State of North Dakota commence a comprehensive program of licensing the sale, lease, and/or distribution of Class III games of chance, gaming equipment, or supplies, no Class III games of chance, gaming equipment or supplies may be purchased, leased or otherwise acquired by the Tribe, after one year subsequent to the date of such enactment, except from a manufacturer or distributor licensed both by the Tribe and the State of North Dakota to sell, lease or distribute Class III gaming equipment or supplies, unless a manufacturer or distributor was licensed to do business in one of the States specified within Section 19.1.A., prior to the date of commencement of such licensing by the State of North Dakota.

19.2 **Required Information.** Prior to entering into any lease or purchase agreement for Class III gaming equipment or supplies, the Tribe's Gaming Commission shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribal Gaming Commission to conduct a background check on those persons.

19.3 **No Business Dealings with Disqualified Parties.** The Tribe shall not enter into any lease or purchase agreement for Class III gaming equipment or supplies with any person or entity if the Tribal Gaming Commission or the State determines that the lessor or seller, or any manager or person holding a direct or indirect financial interest in the lessor/seller or the proposed lease/purchase agreement, has been convicted of a felony or any gambling related crime or whose gaming license has been suspended or revoked because of misconduct through administrative action in any other state or jurisdiction, within the previous five (5) years, or who is determined to have participated in or have involvement with organized crime.

19.4 **Receipt of Gaming Equipment.** All sellers, lessors, manufacturers and/or distributors shall provide, assemble and install all Class III games of chance, gaming equipment and supplies in a manner approved and licensed by the Tribe.

XX. REGULATION AND PLAY OF AN ELECTRONIC GAME.

20.1 **Electronic Game - Definition.** "Electronic Game" means a microprocessor-controlled device that allows a player to play games of chance, which the outcome may or may not be affected by the player's skill. A game is activated by inserting a token, coin, currency, or other object, or use of a credit, and which awards credit, cash, tokens, replays, or a written statement of the player's accumulated credits and that is redeemable for cash.

20.2 **Display.** Game play may be displayed by video facsimile, or mechanical rotating reels that stop in positions that display the presence, or lack of, a winning combination and pay out and which are predetermined by the software of the game.

20.3 **Testing.**

A. Designation of a Gaming Test Laboratory. A Tribe may not operate an electronic game, including a bill acceptor, unless the game (or prototype) and bill acceptor have been tested and approved or certified by a gaming test laboratory as meeting the requirements and standards of this Compact. A gaming test laboratory is a laboratory agreed to and designated in writing by the State and Tribe as competent and qualified to conduct scientific tests and evaluations of electronic games and related equipment. A laboratory operated by or under contract with any State of the United States to test electronic games may be designated.

B. Providing Documentation and Model of an Electronic Game (or Prototype). As requested by a gaming test laboratory, a manufacturer shall provide the laboratory with a copy of an electronic game's (or prototype's) 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. As requested by the laboratory, the manufacturer shall transport one or more working models of the electronic game (or prototype) and related equipment to a location designated by the laboratory. The manufacturer shall pay for all costs of transporting, testing, and analyzing the model. As requested by the laboratory, the manufacturer shall provide specialized equipment or the services of an independent technical expert to assist the laboratory.

C. Report of Test Results. At the end of each test, the gaming test laboratory shall provide the State and Tribe a report containing the findings, conclusions, and a determination that the electronic game (or prototype) and related equipment conforms or does not conform to the hardware and software requirements of this Compact. If the electronic game (or prototype) or related equipment can be modified so it can conform, the report may contain recommended modifications. If the laboratory determines that an electronic game (or prototype) conforms, that determination will apply for all Tribes under this Compact.

D. Modification of an Approved Electronic Game. A Tribe may not modify the assembly or operational functions of an electronic game or related equipment, including logic control components, after testing and installation, unless a gaming test laboratory certifies to the State and Tribe that the modification conforms to the requirements and standards of this Compact.

E. Conformity to Technical Standards. A manufacturer or distributor shall certify, in writing, to the State and Tribe that, upon installation, each electronic game (or prototype): 1) conforms to the exact specifications of the electronic game (or prototype) tested and approved by the gaming test laboratory; and 2) operates and plays according to the technical standards prescribed in this section.

F. Identification. A non-removable plate(s) must be affixed to the outside of each electronic game. The plate must contain the machine's serial number, manufacturer, and a unique identification number assigned by the Tribe and date this number was assigned.

20.4 Tribal Reports to the State.

A. Installation of Electronic Game. At least forty-eight (48) hours before installing an electronic game at a gaming site, the Tribe shall report this information to the State for each game:

(i) Type of game;

(ii) Serial number;

(iii) Manufacturer;

(iv) Source from whom the game was acquired, how the game was transported into the State, and name and street address of the common carrier or person that transported the game;

(v) Certification;

(vi) Unique identification number and date assigned by the Tribe;

(vii) Logic control component identification number;

(vii) Gaming site where the game will be placed; and

(ix) Date of installation.

B. Removal of Electronic Game. Upon removal of an electronic game from a gaming site, the Tribe shall provide the State, in writing:

(i) Information for items i, ii, and iii of subsection A;

(ii) Date on which it was removed;

(iii) Destination of the game; and

(iv) Name of the person to whom the game is to be transferred, including the person's street address, business and home telephone numbers, how the game is to be transported, and name and street address of the common carrier or person transporting the game.

20.5 Hardware Requirements.

A. Physical Hazard. Electrical and mechanical parts and design principles may not subject a player to physical hazards.

B. Surge Protector. A surge protector must be installed on the line that feeds electrical current to the electronic game.

C. Battery Backup. A battery backup or an equivalent must be installed on an electronic game for the game's electronic meters. It must be capable of maintaining the accuracy of all information required by this Compact for one hundred eighty (180) days after electrical current is discontinued. The backup device must be kept within the locked microprocessor compartment.

D. On/Off Switch. An on/off switch that controls the electrical current of an electronic game and any associated equipment must be located in a readily accessible place inside the machine.

E. Static Discharge. The operation of an electronic game should be protected from static discharge or other electromagnetic interference.

F. Management Information System.

(i) The electronic game must be interconnected to a central on-line computer management information system, approved by the gaming test laboratory, that records and maintains essential information on machine play. This information must be retained for thirty (30) days. The State may inspect such records.

(ii) An electronic game using a coin drop hopper is allowed, provided it is monitored by an on-line management information system, which has been approved by the gaming test laboratory. However, should the Tribe maintain individual or clusters of machines apart from a major casino location, all coin hoppers must be monitored by a computer. Data from the machines must be downloaded to the central on-line management information system daily. The system must generate, by machine, analytical reports of coins and currency in, coins out, actual hold and actual to theoretical hold percentages, and error conditions. The term "error conditions" includes any exterior or interior cabinet door openings, coin-in tilts, and hopper tilts. A Tribe shall prepare system reports at least on a monthly basis and retain the reports for at least three years. The State may inspect such records.

(iii) The Tribe shall maintain accurate and complete records of the identification number of each logic control component installed in each electronic game. The State may inspect such records.

G. Cabinet Security. The cabinet or interior area of an electronic game must be locked and not readily accessible.

H. Repairs and Service. An authorized agent or employee of the Tribe may open a cabinet to repair or service the game, but may do it only in the presence of another Tribal agent or employee, or when the access is recorded by a video surveillance system.

J. Cash Compartment. The coin and currency compartment must be locked separately from the main cabinet area, and secured with a key or combination different than the key or combination used for the main cabinet door. However, a separate cash compartment is not required for coins that are necessary to pay prizes through a drop hopper. The keys must be kept in a secure location. Except as provided in this section, the compartment into which coins and bills are inserted must be locked. An employee or official of the Tribe may open the cash compartment to collect the cash and shall record the amount collected.

K. Hardware Switches. No hardware switch may be installed on an electronic game or associated equipment that may alter the game's pay table or payout percentage. Any other hardware switch must be approved by the State and Tribe.

L. Printing of Written Statement of Credits. For an electronic game that awards credits or replays, but not coins or tokens, a player, on completing play may prompt the game to print a written statement of credits. The game's interior printer must retain an exact, legible copy of the statement produced within the game.

M. Network. A Tribe may operate an electronic game as part of a network of games with an aggregate prize; provided:

(i) An electronic game capable of bi-directional communication with external associated equipment must use communication protocol, which ensures that erroneous data will not adversely affect the operation of the game. The local network must be approved a gaming test laboratory; and

(ii) If the network links the Tribe's progressive electronic games to another Tribe's progressive games that are located on the other Tribe's Indian reservation, each participating Tribe must have a Class III gaming compact that authorizes the Tribe's gaming to be operated as part of a multi-location network. All segments of the network must use security standards agreed to between the State and Tribe and which are as restrictive as those used by the Tribe for its on-line games.

20.6 Software Requirements.

A. Randomness Testing. Each electronic game must have a true random number generator that will determine the occurrence of a specific card, symbol, number, or stop position to be displayed on a video screen or by mechanical rotating reels. An occurrence will be considered random if it meets all requirements:

(i) Chi-Square Analysis. Each card, symbol, number, or stop position, which is wholly or partially determinative, satisfies the 99 percent confidence limit using the standard chi-square analysis.

(ii) Runs Test. Each card, symbol, number, or stop position does not, as a significant statistic, produce predictable patterns of game elements or occurrences. Each card, symbol, number, or stop position will be considered random if it meets the 99 percent confidence level with regard to the "runs test" or any generally accepted pattern testing statistic.

(iii) Correlation Analysis. Each card, symbol, number, or stop position is independently chosen without regard to any other card, symbol, number or stop position, drawn within that game play. Each pair of card, symbol, number, or stop position is considered random if they meet the 99 percent confidence level using standard correlation analysis.

(iv) Serial Correlation Analysis. Each card, symbol, number, or stop position is independently chosen without reference to the same card, number, or stop position in the previous game. Each card, number, or stop position is considered random if it meets the 99 percent confidence level using standard serial correlation analysis.

(v) Live Game Correlation. An electronic game that represents a live game must fairly and accurately depict the play of the live game.

B. Software Requirements for Percentage Payout. Each electronic game must meet the following maximum and minimum theoretical percentage payouts. However, these percentages are not applicable to slot tournaments conducted pursuant to Section 3.1(d):

(i) Electronic games that are not affected by player skill must pay out a minimum of eighty (80%) percent and no more than one hundred percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory; and

(ii) Electronic games that are affected by player skill, such as draw poker and twenty-one, must pay out a minimum of eighty-three (83%) percent and no more than one hundred (100%) percent of the amount wagered. This standard is met when using a method of play that will provide the greatest return to the player over a period of continuous play. These percentages shall not be applicable to slot tournaments conducted pursuant to Section 3.1(d).

C. Minimum Probability Standard for Maximum Payout. Each electronic game must have a probability of obtaining the maximum payout, which is greater than 1 in 17,000,000 for each play.

D. Software Requirements for Continuation of Game After Malfunction. Each electronic game must be capable of continuing the current game with all the current game's features after a game malfunction is cleared. This provision does not apply if a game is rendered totally inoperable; however, the current wager and all player credits before the malfunction must be returned to the player.

E. Software Requirements for Play Transaction Records. Each electronic game must maintain an electronic, electro-mechanical, or computer system, approved by a gaming test laboratory, to generate external reports. The system must record and maintain essential information associated with machine play. This information must be retained for at least thirty days, regardless of whether the machine has electrical power.

F. No Automatic Clearing of Accounting Meters. No electronic game may have a mechanism by which an error will cause the electronic accounting meters to automatically clear.

G. Display of Information. The information displayed must be kept under glass or other transparent material. No sticker or other removable item may be placed on the machine face or cover game information.

H. Display of Rules. The machine must display: 1) the rules of the game before each game is played; 2) the maximum and minimum wagers, amount of credits which may be won for each winning hand or combination of numbers or symbols; and 3) the credits the player has accumulated. However, for an electronic game with a mechanical display, this information must be permanently affixed on the game in a conspicuous location.

XXI. AMENDMENTS TO REGULATORY AND TECHNICAL STANDARDS FOR ELECTRONIC GAMES OF CHANCE.

The State and the Tribe acknowledge the likelihood that technological advances or other changes will occur during the duration of this Compact that may make it necessary or desirable that the regulatory and technical standards set forth in Sections 20.5 and 20.6 for electronic games of chance be modified to take advantage of such advances or other changes in order to maintain or improve game security and integrity. Therefore any of the regulatory or technical standards set forth in Sections 20.5 and 20.6 may be modified for the purposes of maintaining or improving game security and integrity by mutual agreement of the North Dakota Attorney General and the Tribal Council or its Chairperson, upon the written recommendation and explanation of the need for such change made by either party.

XXII. REGULATION AND PLAY OF TABLE GAMES.

22.1 **Gaming Table Bank.** The Tribe shall maintain at each table a gaming table bank, which shall be used exclusively for the making of change or handling player buy-ins.

22.2 **Drop Box.** The Tribe shall maintain at each table a game drop box, which shall be used exclusively for rake-offs or other compensation received by the Tribe for maintaining the game. A separate game drop box shall be used for each shift.

22.3 **Gaming Room Bank.** The Tribe shall maintain, at each location at which table games are placed, a gaming room bank, which shall be used exclusively for the maintenance of gaming table banks and the purchase and redemption of chips by players.

22.4 **Rules to be Posted.** The rules of each game shall be posted and be clearly legible from each table and must designate:

A. The maximum rake-off percentage, time buy-in or other fee charged.

B. The number of raises allowed.

C. The monetary limit of each raise.

D. The amount of the ante.

E. Other rules as may be necessary.

XXIII. MINIMUM INTERNAL CONTROL STANDARDS

Tribe shall abide with such Minimum Internal Control Standards as are adopted, published, and finalized by the National Indian Gaming Commission and as may be in current effect.

XXIV. INSPECTION.

24.1 **Periodic Inspection and Testing.** Tribal officials, agents or employees shall be authorized to periodically inspect and test any tribally licensed electronic games of chance. Any such inspection and testing shall be carried out in a manner and at a time, which will cause minimal disruption of gaming activities. The Tribal Gaming Commission shall be notified immediately of all such inspection and testing and the results thereof.

24.2 **Receipt of Reports of Non-compliance.** The Tribe shall provide for the receipt of information by the State as to machines believed to not be in compliance with this Compact or not to be in proper repair. Upon its receipt of such information the Tribe shall reasonably inspect or arrange for the inspection of any identified machine and shall thereafter undertake and complete, or commission the undertaking and completion of such corrective action as may be appropriate.

24.3 **State Inspection of Operations.** Agents of the State of North Dakota, or their designated representatives, shall upon the presentation of appropriate identification, have the right to gain access, without notice during normal hours of operation, to all premises used for the operation of games of chance, or the storage of games of chance or equipment related thereto, and may inspect all premises, equipment, daily records, documents, or items related to the operation of games of chance in order to verify compliance with the provisions of this Compact. Agents of the State making inspection shall be granted access to non-public areas for observations upon request. The Tribe reserves the right to accompany State inspectors within non-public areas. The Tribe shall cooperate as to such inspections. Inspections will be conducted, to the extent practicable, to avoid interrupting normal operations. Any costs associated with such inspection will be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact.

24.4 **Inspection of Electronic Games of Chance.** The State may cause any electronic game of chance in play by the Tribe to be inspected by a Qualified Gaming Test Laboratory or examiner. Inspections shall be conducted, to the extent practicable, to avoid interrupting normal operations. Any costs associated with inspection shall be covered from the Escrow Account for State Expenses established and maintained pursuant to Section XXV of this Compact. The Tribe shall cooperate in such inspection. Upon completion of such testing, test results must be provided to both the State and the Tribe.

24.5 **Removal and Correction.** Any machine confirmed to be in non-compliance with this Compact shall be removed from play by the Tribe and brought into compliance before reintroduction.

XXV. ESCROW ACCOUNT FOR STATE EXPENSES.

25.1 **Escrow Fund.** The Tribe shall establish an escrow fund at a bank of their choosing with an initial contribution of Fifteen Thousand and no/100 ($15,000.00) dollars to reimburse the State for the expenses specifically names for reimbursement in this Compact and for participation in legal costs and fees incurred in defending, with the concurrence of the Tribe, third party challenges to this Compact. The Tribe shall replenish the said escrow account as necessary and agree that the balance in the said escrow account will not drop below the sum of seven thousand five hundred and no/100 ($7,500.00) dollars.

25.2 **Procedure.** The payments referenced above shall be made to an escrow account from which the State may draw as hereinafter provided. The State shall bill the Tribe the reasonable, necessary, and actual costs related to obligations undertaken under this Compact. Unless unreasonable or unnecessary, the costs for such services shall be that established by state law. The State shall send invoices to the Tribe for these services and shall thereafter be permitted to withdraw the billed amounts from the escrow account under the circumstances provided in this section. The Tribe shall be advised in writing by the State of all withdrawals from the Escrow Account and as to the purpose of such withdrawal.

25.3 **Tribal Challenge.** Should the Tribe believe that any expenses for which the State has billed the Tribe under this section, or actions which the State proposes to undertake and charge the Tribe for, are unnecessary, unreasonable or beyond the scope authorized by this Compact, the Tribe may invoke any of the Dispute Resolution procedures specified in Section XXVII below. In such event, the provisions set forth above shall remain in full force and effect pending resolution of the complaint of the Tribe. Should, however, it be determined that any expense charged against the Tribe is not necessary, not reasonable and/or is not within the scope of this Compact, the State shall reimburse the Tribe any monies withdrawn from escrow to meet such expense.

25.4 **Termination of Escrow.** Any monies that remain on deposit at the time this Compact, including all extensions thereof, concludes, shall be reimbursed to the Tribe.

XXVI. IGRA REMEDIES PRESERVED.

Nothing in this Compact shall be construed to limit the rights or remedies available to the parties hereto under the IGRA.

XXVII. WORKER'S COMPENSATION AND UNEMPLOYMENT INSURANCE

27.1 **Unemployment Insurance.** In order to provide protection to the employees of the Tribe from unemployment, the Tribe and the State agree that all employees engaged in gaming activities as provided herein, whose coverage would be mandated under North Dakota law in the case of a non-Tribal employer, shall be covered by the North Dakota Unemployment Insurance Fund, and to that extent, the Tribe agrees as an employer to participate in those funds as provided herein. The Tribe will pay premiums for such employees to the Fund as any other employer in the State of North Dakota. The Tribe and its employees that are employed in gaming activities shall have all rights and remedies as any employer or employee covered by the Fund. To that end, the Tribe and the State agree that any dispute with respect to the aforementioned funds, the coverage and benefits provided thereby, and premiums assessed and collected, shall be in the Courts of the State of North Dakota, and for that limited purpose, the Tribe and the State, each respectively, make a limited waiver of sovereign immunity.

27.2 **Worker's Compensation.** In order to provide protection to the employees of the Tribe from injury, the Tribe and the State agree that all employees engaged in gaming activities, as provided herein, whose coverage would be mandated under North Dakota law in the case of a non-Tribal employer, shall be covered by worker's compensation insurance comparable to that provided under North Dakota state law to employees covered thereby. Tribe may elect to obtain coverage from the North Dakota Worker's Compensation Bureau or from one or more private insurers certified to provide insurance coverage for any purpose within the State of North Dakota.

Should Tribe elect to obtain coverage from the North Dakota Worker's Compensation Bureau, the Tribe will pay premiums for such employees to the Bureau as any other employer in the State of North Dakota, with the Tribe and its employees that are employed in gaming activities having all rights and remedies as any employer covered under North Dakota state law. To that end, the Tribe and the State agree that any dispute with respect to the coverage and benefits provided under North Dakota state law and premiums assessed and collected by the North Dakota Worker's Compensation Bureau shall be in the courts of the State of North Dakota, and for that limited purpose, the Tribe and the State, each respectively, make a limited waiver of sovereign immunity.

XXVIII. DISPUTE RESOLUTION.

28.1 If either party believes that the other party has failed to comply with any requirement of this Compact, it shall invoke the following procedure:

A. The party asserting the non-compliance shall serve written notice on the other party. The notice shall identify the specific statutory, regulatory or Compact provision alleged to have been violated and shall specify the factual basis for the alleged non-compliance. The State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

B. If the dispute is not resolved to the satisfaction of the parties within ninety (90) days after service of the notice set forth, either party may pursue any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact, including:

(i) Arbitration pursuant to the specifications set forth in this section.

(ii) Commencement of an action in the United States District Court for the District of North Dakota.

(iii) Any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact.

28.2 In the event an allegation by the State asserting that a particular gaming activity by the Tribe is not in compliance with this Compact, where such allegation is not resolved to the satisfaction of the State within ninety (90) days after service of notice, the State may serve upon the Tribe a notice to cease conduct of such gaming. Upon receipt of such notice, the Tribe may elect to stop the gaming activity specified in the notice or invoke one or more of the additional dispute resolution procedures set forth above and continue gaming pending final determination.

28.3 In the event an allegation by the Tribe is not resolved to the satisfaction of the Tribe within ninety (90) days after service of the notice set forth above, the Tribe may invoke arbitration as specified above.

28.4 Any arbitration under this authority shall be conducted under the rules of the American Arbitration Association, except that the arbitrators will be selected by the State picking one arbitrator, the Tribe a second arbitrator and the two so chosen shall pick a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is picked, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association.

28.5 Either party may initiate action in United States District Court to enforce an arbitration determination, or to pursue such relief as may be unavailable through arbitration.

XXIX. COOPERATION BY PARTIES

29.1 **Gambling Addiction Programs.** The parties hereto wish to proclaim their joint support of effective programs to address gambling addiction. Past donations in support of such efforts by Tribe are acknowledged. Tribe intends to continue such voluntary donations. State shall extend efforts to facilitate similar support from other gaming interests within North Dakota. The parties shall continue their joint efforts to most effectively support gambling addiction treatment, education and prevention programs, including completion of a study of gaming addiction in the State of North Dakota, to be completed by the start of the 2001 Legislative session.

29.2 **Government-to-Government Issues.** The parties acknowledge that there exist many Government-to-Government issues of concern between them and pledge to cooperate with each other in addressing such issues.

29.3 **Local Jurisdictions.** Tribe and Local Jurisdictions shall in good faith negotiate relative to the provision by the local jurisdiction of such services to the Tribe as may be requested by the Tribe, and as to a reasonable contribution from the Tribe for such services. Tribe and Local Jurisdictions shall in good faith negotiate as to a reasonable contribution from the Tribe for services by local jurisdictions necessitated by the presence of a Tribal casino.

XXX. CONSULTATION.

Tribe and State shall in good faith periodically inform each other of issues associated with the implementation of this Compact and at the request of either party shall meet and discuss matters of concern. A status review meeting shall be had at least bi-annually in even numbered years between Tribe, other compacting Tribes within the state of North Dakota and state officials, including, but not limited to representatives of the Governor, Attorney General and legislative leaders. The State and the Tribe are concerned about the long term impact to the people of North Dakota (tribal and non-tribal alike) and are committed to implementing this Compact, making every effort during the term thereof, to provide economic opportunities and deal appropriately with any consequences resulting from gambling.

XXXI. EFFECTIVE DATE.

This Amended Compact shall become effective, and shall supersede the terms of the parties initial Gaming Compact, upon execution by the Chairperson of the Tribe and the Governor of the State, approval by the Secretary of the Interior, and publication of such approval in the Federal Register pursuant to the IGRA.

XXXII. DURATION.

32.1 **Term.** This Compact shall be in effect, following its effective date, for a term consisting of the remaining period of the initial Class III Gaming Compact between Tribe and State (without any extensions) and thereafter for a period of ten (10) years.

32.2 **Initial Renewal.** This Compact shall, without action by either party, be extended for an additional five (5) year period beyond the term specified at Section 32.1 above, unless during the remaining period of the initial Class III Gaming Compact between Tribe and State or during a subsequent period of seven (7) years thereafter, either party, believes that the other has not been in substantial good faith compliance with the terms of this Compact and gives notice of non-compliance within the term herein specified. Such notice must be given in writing at least thirty (30) days prior to the conclusion of the above identified period ("Notice Date"). The Notice must be accompanied with specifications designating the manners the party is believed to have not been in good faith compliance. Failure by a party to give notice by the Notice Date as to activity by the other it views disfavor does not eliminate the ability of such party to arbitrate its concerns under Article XXVIII.

If an arbitration panel, upon consideration of conduct occurring between the Notice Date and the end of the term specified at Section 32.1, determines that the Tribe has been in substantial non-compliance, the Governor within thirty (30) days of the determination may vacate the five (5) year extension provided therein. The parties may thereafter negotiate for a Successor Compact.

32.3 **Automatic Extension.** The duration of this Compact shall thereafter be automatically extended for terms of five (5) years upon written notice of renewal by either party on the other party during the final year of the original term of this Compact, inclusive of the initial renewal as specified applying both Section 32.1 and Section 32.2 or any extension thereof, unless the Tribe or the Governor serves written notice of non-renewal within thirty (30) days thereafter, or unless the North Dakota Legislature directs notice of non-renewal, by Bill or Resolution, passed with two-third (2/3) majority in each house during the legislative session immediately prior to the expiration of the Compact.

32.4 **Operation.** The Tribe may operate Class III gaming only while this Compact, including any amendment or restatement thereof is in effect.

32.5 **Successor Compact.** In the event that written notice of non-renewal of this Compact is given by one of the parties above, the Tribe may, pursuant to the procedures of the Indian Gaming Regulatory Act, request the State to enter into negotiations for a successor compact governing the conduct of Class III gaming activities to become effective following the expiration of this Compact. Thereafter the State shall negotiate with the Tribe in good faith concerning the terms of a successor compact (see § 11(d)(3)(A) of the Act).

32.6 **Interim Operation.** If a Successor Compact is not concluded by the expiration date of this Compact, or any extension thereof, and should either party request negotiation of a successor compact, then this Compact shall remain in effect until the procedures set forth in Section 11(d)(7) of the Act are exhausted, including resolution of any appeal.

32.7 **Cessation of Class III Gaming.** In the event written notice of non-renewal is given by either party as set forth in this section, the Tribe shall cease all Class III gaming under this Compact upon the expiration date of this Compact, or upon the date the procedures specified above associated with a successor compact are concluded and a successor compact, if any, is in effect.

32.8 **Pari-Mutuel Horse Racing Addendum.** The duration specified above shall also be applicable to the pari-mutuel horse racing addendum to the Gaming Compact between Tribe and State pursuant to Section XVI of said Pari-mutuel Horse Racing Addendum that provides that the term of said Addendum shall be simultaneous with that of the Compact.

XXXIII. GEOGRAPHIC SCOPE OF COMPACT.

This compact shall only govern the conduct of Class III games by the Tribe upon Tribal trust lands within the current exterior boundaries of the Turtle Mountain Reservation which are in compliance with Section 2719 of the Indian Gaming Regulatory Act and the San Haven property, located and described as follows: The SW1/4 of the SE1/4 in Section 19; the E1/2 of the NW1/4, the NE1/4, the NE1/4 of the SW1/4, the N1/2 of the SE1/4 of Section 30 and the SW1/4 and the W1/2 of the SE1/4 of Section 29, approximately 640 acres. The execution of this Compact shall not in any manner be deemed to have waived the rights of the State pursuant to that Section.

XXXIV. AMENDMENT.

The State or the Tribe may at any time and upon proper notification request amendment or negotiations for the amendment of this Compact. Both parties shall negotiate any requested amendment in good faith and reach a determination thereupon within ninety (90) days. Amendments to this Compact shall not become applicable until agreed to by both parties and, if necessary, approved by the United States Secretary of Interior.

XXXV. NOTICES.

Unless a party advises otherwise in writing, all notices, payments, requests, reports, information or demand which any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first class certified or registered United States mail, postage prepaid, return receipt requested, and sent to the other party at its address appearing below or such other address as any party shall hereinafter inform the other party hereto by written notice given as aforesaid:

Notice to the Tribe shall be sent to:

Chairman, Tribal Council
Turtle Mountain Band of Chippewa Indians
Business Office
PO Box 900
Belcourt, ND 58316-0900

Notice to the State shall be sent to:

Governor, State of North Dakota
Office of the Governor
600 East Boulevard Avenue
Bismarck, ND 58505

Attorney General, State of North Dakota
Office of the Attorney General
600 East Boulevard Avenue
Bismarck, ND 58505

Each notice, payment, request, report, information or demand so given shall be deemed effective upon receipt, or if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

XXXVI. ENTIRE AGREEMENT.

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

XXXVII. NO ASSIGNMENT.

Neither the State nor the Tribe may assign any of its respective right, title, or interest in this Compact, nor may either delegate any of its respective obligations and duties except as expressly provided herein. Any attempted assignment or delegation in contravention of the foregoing shall be void.

XXXVIII. SEVERABILITY.

Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this Compact to be invalid, the remaining provisions, sections and subsections of the Compact shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Compact to be executed as of the day and year first above written.

STATE OF NORTH DAKOTA

By: Edward T. Schafer
Governor

Dated this 29th day of September, 1999

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

By: Richard LaFromboise
Chairman

Dated this 29th day of September, 1999

DEPARTMENT OF THE INTERIOR

BY: _____
Kevin Gover
Assistant Secretary - Indian Affairs

DATED: OCT 25, 1999

IN WITNESS WHEREOF, the parties hereto have caused this Compact to be executed as of the day and year first above written.

STATE OF NORTH DAKOTA

By: Edward T. Schafer
Governor

Dated this 29th day of September, 1999

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

By: Richard LaFromboise
Chairman

Dated this 29th day of September, 1999

DEPARTMENT OF THE INTERIOR

BY: _____
Kevin Gover
Assistant Secretary - Indian Affairs

DATED: OCT 25, 1999