
MCCRACKEN AND AMICK,
INCORPORATED d/b/a THE NEW
VEMCO MUSICO CO. and RALPH
AMICK,

Appellants,

vs.

BEVERLY EAVES PERDUE, in her
official capacity as Governor of
North Carolina,

Appellee.

From:
Wake County
10 Cvs 3520

2011 FEB 11 9 1:08
FILED

RECORD ON APPEAL

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STATEMENT OF ORGANIZATION OF THE TRIAL COURT

This matter came on for hearing before the Honorable Paul G. Gessner, Superior Court Judge presiding over the November 8, 2010, Session of the Wake County Superior Court. Plaintiffs appeal to the Court of Appeals from the Order entered on December 2, 2010, dismissing their cause of action.

The record on appeal was filed in the Court of Appeals on February 11, 2011 and was docketed on February 18, 2011.

STATEMENT OF JURISDICTION

This action was commenced by the filing of a Complaint and issuance of a summons on February 25, 2010. The parties acknowledge that the trial court had jurisdiction over the persons and subject matter of the action. The parties hereby stipulate that unless there is a material dispute as to the timing or service of a particular document, all documents required to be filed and served were filed and served in a timely manner and that all unnecessary certificates of service may be omitted from the record.

STATEMENT OF RECORD

The parties acknowledge that the record on appeal has been agreed to by stipulation of counsel pursuant to Rule 11(a) of the North Carolina Rules of Appellate Procedure.

STATE OF NORTH CAROLINA File No.

WAKE County

In The General Court Of Justice
 District Superior Court Division

Name Of Plaintiff
McCracken and Amick, Incorporated d/b/a New Vemco Music Co.
Address
2858 Owen Drive
City, State, Zip
Fayetteville, North Carolina 28306

CIVIL SUMMONS
 ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

VERSUS
Name Of Defendant(s)
Beverly Eaves Perdue, in her official capacity as
Governor of North Carolina

Date Original Summons Issued
 Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
Honorable Beverly Eaves Perdue
Office of the Governor
20301 Mail Service Center
Raleigh, North Carolina 27699-0301

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!
You are notified to appear and answer the complaint of the plaintiff as follows:
1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.
If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
Hugh Stevens
Everett, Gaskins, Hancock & Stevens, LLP
Post Office Box 911
Raleigh, North Carolina 27602

Date Issued **FEB 25 2010** Time **4** AM PM
Signature *[Signature]*
 Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM
Signature
 Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<div style="border: 1px solid black; height: 20px; width: 100%;"></div> <small><i>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</i></small>		
<input type="checkbox"/> Other manner of service <i>(specify)</i>		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
<div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
DEFENDANT 2		
<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<div style="border: 1px solid black; height: 20px; width: 100%;"></div> <small><i>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</i></small>		
<input type="checkbox"/> Other manner of service <i>(specify)</i>		
<input type="checkbox"/> Defendant WAS NOT served for the following reason.		
<div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>	
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>	
<i>Date Of Return</i>	<i>County Of Sheriff</i>	
<div style="border: 1px solid black; height: 20px; width: 100%;"></div>		

1001093520

STATE OF NORTH CAROLINA

File No.

WAKE County

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
McCracken and Amick, Incorporated d/b/a The New Vemco Music Co.

Name And Address Of Plaintiff 2
Ralph Amick

VERSUS
Name Of Defendant 1
Beverly Eaves Perdue, in her official capacity as Governor of North Carolina

Summons Submitted Yes No

Name Of Defendant 2

Summons Submitted Yes No

Jury Demanded In Pleading
Complex Litigation

- TYPE OF PLEADING
(check all that apply)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Answer/Reply (ANSW-Response)
Complaint (COMP)
Confession of Judgment (CNFJ)
Counterclaim vs. (CTCL)
All Plaintiffs Only (List on back)
Crossclaim vs. (List on back) (CRSS)
Extend Statute of Limitations, Rule 9 (ESOL)
Extend Time For Answer (MEOT-Response)
Extend Time For Complaint (EXCO)
Rule 12 Motion In Lieu Of Answer (MDLA)
Third Party Complaint (List Third Party Defendants on Back) (TPCL)
Other: (specify)

NOTE: Small claims are exempt from cover sheets.

Date 25 Feb 2010

NOTE: The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a cover sheet or the filing must comply with G.S. 7A-34.1.

GENERAL
CIVIL ACTION COVER SHEET
INITIAL FILING SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)
Hugh Stevens
Everett, Gaskins, Hancock & Stevens, LLP
Post Office Box 911
Raleigh, North Carolina 27602

Telephone No. 919-755-0025
Cell Telephone No. 919-612-3530

NC Attorney Bar No. 4158
Attorney E-Mail Address hugh@eghs.com

Initial Appearance in Case Change of Address

Name Of Firm
Everett, Gaskins, Hancock & Stevens, LLP
FAX No. 919-755-0009

Counsel for
All Plaintiffs All Defendants Only (List party(ies) represented)

Amount in controversy does not exceed \$15,000
Stipulate to arbitration

- CLAIMS FOR RELIEF FOR:
(check all that apply)
Administrative Appeal (ADMA)
Appointment of Receiver (APRC)
Attachment/Garnishment (ATTC)
Claim and Delivery (CLMD)
Collection on Account (ACCT)
Condemnation (CNDM)
Contract (CNTR)
Discovery Scheduling Order (DSCH)
Injunction (INJU)
Medical Malpractice (MDML)
Minor Settlement (MSTL)
Money Owed (MNYO)
Negligence - Motor Vehicle (MVNG)
Negligence - Other (NEGO)
Motor Vehicle Lien G.S. 44A (MVLN)
Limited Driving Privilege - Out-of-State Convictions (PLDP)
Possession of Personal Property (POPP)
Product Liability (PROD)
Real Property (RLPR)
Specific Performance (SPPR)
Other: (specify)
Declaratory Judgment

Signature Of Attorney Party

No.	<input type="checkbox"/> Additional Plaintiff(s)

No.	<input type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

<i>Plaintiff(s) Against Whom Counterclaim Asserted</i>

<i>Defendant(s) Against Whom Crossclaim Asserted</i>

1007903520

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS _____

McCRACKEN and AMICK,
INCORPORATED d/b/a THE NEW
VEMCO MUSIC CO. and RALPH AMICK,

Plaintiffs,

vs.

BEVERLY EAVES PERDUE, in her official
capacity as Governor of North Carolina,

Defendant.

COMPLAINT

FILED
2021 MAR 25 P 10 23
CLERK OF SUPERIOR COURT
WAKE COUNTY, NC

The plaintiffs, complaining of the defendant, allege and say:

1. Plaintiff McCracken and Amick, Incorporated is a North Carolina corporation that has its principal place of business in Cumberland County, North Carolina and does business as The New Vemco Music Company ("New Vemco"). New Vemco owns and operates video games and vending and amusement devices such as juke boxes, pinball machines and pool tables.
2. Plaintiff Ralph Amick ("Mr. Amick") is a citizen and resident of Cumberland County, North Carolina and president of McCracken and Amick, Incorporated.
3. Defendant Beverly Eaves Perdue ("Governor Perdue") is the duly elected and serving Governor of North Carolina. She is sued in her official capacity.
4. This action for declaratory and injunctive relief arises out of the interplay among the Constitution of North Carolina; the "Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina" (the "Compact"); the federal Indian Gaming Regulatory Act ("IGRA"); and the State of North Carolina's comprehensive prohibition of video poker games and machines. As explained below, plaintiffs and the defendant are parties to genuine, ongoing and justiciable disputes with respect to whether the North Carolina

Constitution authorizes the Governor to negotiate revisions or amendments to the Tribal-State Compact between the State of North Carolina and the Eastern Band of Cherokee Indians.

5. This court has jurisdiction over this action pursuant to the North Carolina Uniform Declaratory Judgment Act, N.C. Gen. Stat. §§ 1-253 through 1-267, and its equity powers.

6. Venue of this action is laid in Wake County pursuant to N.C. Gen. Stat. §§ 1-77 and 1-82.

7. In 1988 Congress enacted IGRA in response to the Supreme Court's decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S. Ct. 1083, 94 L. Ed.2d 244 (1987), in which the Court held that the states had little or no authority to enforce anti-gaming laws on tribal lands. IGRA declares that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." 25 U.S.C. § 2701(5). IGRA provides statutory authorization for the establishment of Indian casinos, attempts to regulate the gaming so as to avoid "corrupting influences" and seeks to ensure that the Indian tribes are the primary beneficiaries of the gaming. See 25 U.S.C. § 2702.

8. IGRA creates three classes of wagering games. Class I games are those "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6) Class II gaming includes bingo and card games (excluding banking card games) that are operated in accordance with state law limits on the amount of wagers and hours of operation. See 25 U.S.C. § 2703(7). Pursuant to 25 U.S.C. § 2703(8), "Class III gaming" includes all other forms of gambling.

9. IGRA requires a compact between a tribe and the state before the tribe will be permitted to conduct "Class III" gaming, which includes video poker machines. When a tribe requests that a compact be negotiated, a state is required to do so in good faith. IGRA

authorizes a compact only in a "State that permits such gaming for any purpose by any person, organization, or entity." 25 U.S.C. § 2710(d)(1)(B).

10. At the behest of the Tribe and under the stimulus and compulsion of IGRA, former Governor James B. Hunt, Jr. negotiated the terms of the Compact with the Tribe and executed it on behalf of the State in August, 1994. Pursuant to the terms of the Compact the Tribe established and operates Harrah's Cherokee Casino at Cherokee, North Carolina. The Cherokee Casino attracts more than 3.5 million visitors each year and produces annual revenues in excess of \$250,000,000.

11. The Compact authorizes the Tribe to conduct certain specifically defined "raffles" and "video games" together with "such other Class III gaming which [*sic*] may be authorized" in writing by the Governor. An amendment executed by former Governor Michael F. Easley in 2000 extended the Compact's original seven-year term to the year 2030. A true copy of the Compact, as amended, is attached as Exhibit A and incorporated by reference.

12. Neither the original Compact negotiated and executed by Governor Hunt nor the amendments negotiated and executed by Governor Easley were contemporaneously reviewed, approved or codified by the General Assembly.

13. In addition to the Tribal-State Compact described above, North Carolina is a party to more than twenty interstate compacts. Unlike the Tribal-State Compact, the terms and conditions of each of these interstate compacts were approved and codified by the General Assembly.

14. The "separation of powers" clause of the North Carolina Constitution (Article I, §6) provides that "the legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." The approval of compacts between the State of North Carolina and other sovereign entities, including the Eastern Band of the Cherokee Indians, is a core legislative function; therefore, by negotiating and executing the Compact and amendments thereto Governors Hunt and Easley violated the state constitution's

"separation of power" clause. Likewise, any future modifications or amendments to the Compact that may be negotiated by the defendant or her successor(s) will violate the "separation of powers" clause unless their terms and conditions are subject to modification and approval by the General Assembly.

15. In 2001 the General Assembly included language in an obscure end-of-session "technical corrections" bill purporting to authorize the governor

To negotiate and enter into Class III Tribal-State gaming compacts, and amendments thereto, on behalf of the State consistent with State law and the Indian Gaming Regulatory Act, Public Law 100-497, as necessary to allow a federally recognized Indian tribe to operate gaming activities in this State as permitted under federal law.

2001 N. C. Sess. Laws 513 § 29(a), which is codified as N.C. Gen. Stat. §147-12(14). The legislation also stated that "This section is effective August 1, 1994, and applies to compacts and amendments thereto executed on or after that date." 2001 N.C. Sess. Laws 512 § 29 (c). This legislation is null, void and of no effect because (a) it purports to be effective retroactive to a date more than seven years prior to its enactment; (b) it purports to ratify constitutionally impermissible actions by former Governors Hunt and Easley; and (c) it purports to delegate to the Governor a core, non-delegable duty and responsibility of the General Assembly.

16. The Compact authorizes the Tribe to conduct "Class III" gaming under three specific circumstances:

- (a) the games are "expressly enumerated" in Section 4(A) of the Compact;
- (b) the games are approved in writing by the Governor; or
- (c) the games are authorized by an amendment to the Compact.

17. The Compact currently permits the Tribe to conduct Class III gaming in electronic formats only. In 2005 the Tribe asked Governor Easley to expand the scope of their authorized Class III gaming to include "live" gaming such as poker, blackjack and craps, but he did not do so, either by written agreement with the Tribe or by amendment to the Compact itself.

18. By its terms the Compact currently permits only two types of Class III games: the "raffles" referenced in Section 4.(A)(1) and the "video games" referenced in Section 4.(A)(2), each of which is specifically defined in Section 3. As defined by Section 3.(E), a "raffle" is "a game in which a cash or merchandise prize with a value of not more than \$50,000 is won by random selection of the name or number of one or more persons who have entries in the game." This definition is consistent with N.C. Gen. Stat. § 14-309.15, which permits tax-exempt non-profit organizations to conduct raffles in which the prize value does not exceed \$50,000.

19. As amended in 2000, Section 3.(H) defines a "video game" as "any electronic video game or amusement device that allows a player to play a game of amusement involving the use of skill or dexterity as allowed under NCGS 14-306(b) and 14-306.1 or as subsequently amended by the North Carolina General Assembly." N.C. Gen. Stat. § 14-306.1, which regulated video poker in North Carolina, was repealed in 2006 by Chapter 6 of the 2006 Session Laws.

20. Section 4.(C) of the Compact provides that "In the event that any Class III gaming authorized [herein] is prohibited by state or federal law, the Tribe shall not conduct such gaming." The repeal of N.C. Gen. Stat. § 14-306.1 removed the Tribe's authority to conduct video poker provided in Section 4(C) of the Compact. No new or amended Compact has been adopted or ratified by the General Assembly since the repeal of N.C. Gen. Stat. § 14-306.1.

21. Prior to July 1, 2007, the date on which the General Assembly's prohibition and criminalization of video poker became effective, the plaintiffs' business included the sale, lease, distribution, operation and maintenance of video poker machines. The plaintiffs' video poker business was conducted in compliance with the law and was profitable.

22. Pursuant to the authority putatively provided by N.C. Gen. Stat. § 14-306.1A (e), the Tribe has continued to advertise and operate video poker games at its casino, where the plaintiffs are informed and believe that patrons may play more than 3000 video poker games. See <http://www.harrahsherokee.com>.

23. The General Assembly's prohibition and criminalization of the plaintiffs' video poker games, combined with the Tribe's continued operation of such games, has caused the plaintiffs to incur severe financial loss and injury.

24. On or about September 1, 2009 Governor Perdue attended the grand opening of the Tribe's Sequoyah National Golf Club, where she stated publicly that she was open to the possibility of negotiating expanded Class III gaming with the Tribe. Therefore, the plaintiffs are informed and believe that unless this court declares that the North Carolina Constitution does not authorize the Governor to negotiate or execute Tribal-State compacts or amendments to them, the defendant will engage in such actions in violation of the North Carolina Constitution and in usurpation of the authority of the General Assembly.

25. By letter dated 3 February 2010, the plaintiffs notified Governor Perdue that by repealing N.C. Gen. Stat. § 14-306.1 the General Assembly had rendered the Tribe's video poker games unlawful pursuant to Section 4.C of the Compact and demanded that she notify the Tribe immediately that it must terminate its operation of any video poker games. By the same letter, a true copy of which is attached and incorporated as Exhibit B, the plaintiffs demanded that Governor Perdue "refrain from engaging in any and all future negotiations, revisions or amendments to the Compact with the Cherokees to avoid further violation of North Carolina's Constitution." Plaintiffs sent a copy of the letter to Attorney General Roy Cooper.

26. By letter dated 16 February 2010 (Exhibit C), Governor Perdue, through her general counsel, rejected the plaintiffs' requests; therefore, she and the plaintiffs are parties to subsisting and genuine disputes as to the governor's authority to negotiate and execute a Tribal-State Compact on behalf of the state. The plaintiffs have a genuine, tangible stake in the outcomes of both disputes.

27. A judicial declaration that the state constitution does not authorize the Governor of North Carolina to negotiate revisions or amendments to the Tribe-State Compact would benefit the plaintiffs and all North Carolina citizens, including members of the Tribe, by

preventing the defendant and future governors from committing or compounding constitutional errors that could vitiate the Tribal-State Compact.

28. The declaratory judgments sought by the plaintiffs would serve to clarify and settle the legal rights and responsibilities of the Governor and the General Assembly.

WHEREFORE, the plaintiffs respectfully pray that the court:

1. Enter a judgment declaring that under the North Carolina Constitution the authority to negotiate, approve and execute tribal-state compacts or amendments to the existing Tribal-State is reserved to the General Assembly and may not be delegated to the Governor;

2. Enter a judgment declaring that N.C. Gen. Stat. §147-12(14) constitutes an unconstitutional attempt by the General Assembly to retroactively approve unconstitutional actions by former Governors Hunt and Easley and thus is null, void and of no effect;

3. Issue an injunction prohibiting the defendant and her successors from negotiating, approving or executing tribal-state compacts or amendments to the existing Tribal-State compact;

4. Tax the costs of this action against the defendant; and

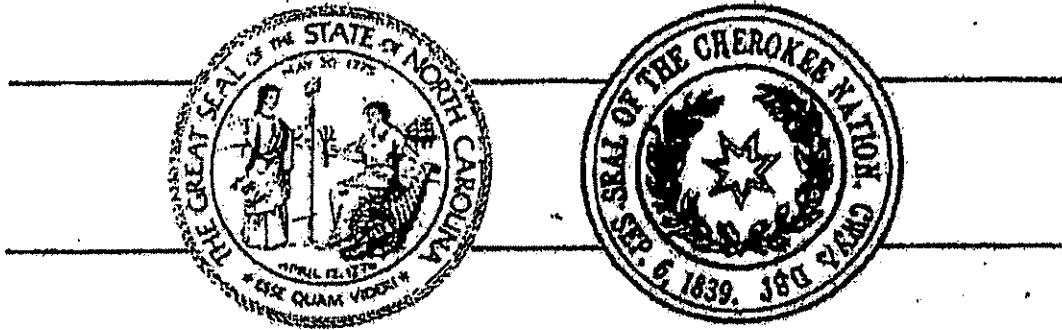
5. Grant the plaintiffs such further and additional relief as the court shall deem just and proper.

This the 25th day of February, 2010.

EVERETT GASKINS HANCOCK & STEVENS, LLP

By: 

Hugh Stevens
N.C. State Bar No. 4158
Michael J. Tadych
N.C. State Bar No. 24556
Attorneys for Plaintiffs
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P.O. Box 911
Raleigh, NC 27602
919.755.0025
919.755.0009 (facsimile)
www.eghs.com



Tribal - State Compact
Between the Eastern Band of Cherokee Indians
And the State of North Carolina

EXHIBIT A

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

THIS TRIBAL - STATE COMPACT made and entered into this 11th day of AUGUST, 1994, by and between the EASTERN BAND OF CHEROKEE INDIANS, a federally recognized Indian tribe acting through its Principal Chief, the Honorable Jonathan L. Taylor, and the STATE OF NORTH CAROLINA, acting through its Governor, the Honorable James B. Hunt, Jr.;

W I T N E S S E T H:

WHEREAS, the Eastern Band of Cherokee Indians is a federally recognized Indian tribe, possessed of all sovereign powers and rights thereto pertaining; and,

WHEREAS, the State of North Carolina is a sovereign state of the United States of America with all rights and powers thereto pertaining; and,

WHEREAS, the Congress of the United States has enacted into law the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. 2701 et seq., which provides in part that a Tribal - State Compact may be negotiated between a Tribe and a State to set forth the rules, regulations and conditions under which an individual Tribe may conduct Class III gaming, as defined in the Act, on Indian lands within a state permitting gaming; and,

WHEREAS, the statutes of the State of North Carolina permits bingo and raffles and certain video activities to award something of value to players; and,

WHEREAS, the Eastern Band of Cherokee Indians and the State of North Carolina have mutually agreed to the terms and conditions under which Class III gaming may be conducted on tribal lands; and,

WHEREAS, the Eastern Band of Cherokee Indians and the State of North Carolina have mutually agreed that the conduct of Class III gaming under the terms and conditions set forth below will benefit the Eastern Band of Cherokee Indians and protect the citizens of the Eastern Band of Cherokee Indians and the State of North Carolina, consistent with the objectives of the Indian Gaming Regulatory Act;

NOW, THEREFORE, THE EASTERN BAND OF CHEROKEE INDIANS AND THE STATE OF NORTH CAROLINA do enter into a Tribal - State Compact as provided for herein.

Section 1. TITLE. This document shall be cited as "The Eastern Band of Cherokee Indians - State of North Carolina Gaming Compact."

Section 2. DECLARATION OF POLICIES AND PURPOSES. The purposes of this Compact are:

(A) To authorize the operation of Class III gaming by the Eastern Band of Cherokee Indians on Eastern Cherokee Lands as a means of promoting tribal economic development, self-sufficiency, and strong tribal government;

(B) To provide for the regulation of Class III gaming by the Eastern Band of Cherokee Indians to protect against organized crime and other corrupting influences, to assure that Class III gaming is conducted fairly and honestly by both the Eastern Band of Cherokee Indians and the participants and to ensure that the Eastern Band of Cherokee Indians is the primary beneficiary of the Class III gaming operation; and

(C) To fulfill the purpose and intent of the Indian Gaming Regulatory Act by providing for certain Class III gaming by an Indian tribe on Indian lands as a means of generating tribal revenues.

Section 3. DEFINITIONS. For purposes of this Compact:

(A) "Act" means the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. 2701 et seq.

(B) "Class II gaming" means all forms of gaming as defined in 25 U.S.C. 2703(7).

(C) "Class III gaming" means all forms of gaming that are not Class I gaming or Class II gaming, as defined in 25 U.S.C. 2703(6) and (7).

(D) "Eastern Cherokee Lands" means all tribal trust lands within the Cherokee Indian Reservation located in Jackson, Swain, Haywood, Graham and Cherokee counties and all lands within these counties which may be acquired in trust by the Eastern Band of Cherokee Indians in the future which meet the requirements of Section 20 of the Act, 25 U.S.C. Section 2719.

(E) "Raffles" means a game in which a cash prize of not more than \$5,000 or a merchandise prize valued at not more than \$25,000 is won by random selection of the name or number of one or more persons purchasing chances.

(F) "State" means the State of North Carolina, its authorized officials, agents and representatives.

(G) "Tribe" means the Eastern Band of Cherokee Indians, its authorized officials, agents and representatives.

(H) "Video Game" means any electronic video game or amusement device that allows a player to play a game of amusement involving the use of skill or dexterity as is permitted by the laws of the State.

Section 4. AUTHORIZED CLASS III GAMING.

The Tribe has the right to license and regulate gaming activity on Eastern Cherokee lands in accordance with the Act and this Compact.

(A) The Tribe may conduct any or all of the following:

- (1) Raffles as defined in Section 3.
- (2) Video games as defined in Section 3.
- (3) Such other Class III gaming which may be authorized pursuant to 4(B) of this Compact.

(B) The Tribe may apply to the State for authorization to conduct Class III gaming not expressly enumerated in 4(A) of this Compact.

- (1) The application shall be submitted in writing by the Principal Chief to the Governor and shall identify with specificity the additional proposed gaming activities and any proposed amendments to the Tribe's regulatory ordinances.
- (2) The Governor shall take action on the Tribe's application within one hundred and eighty (180) days after receipt. The Governor's action shall be based on:
 - (a) whether the proposed gaming activities are permitted by the laws of the State of North Carolina consistent with 25 U.S.C. 2701 et. seq. and
 - (b) whether the existing or proposed regulatory controls and criminal sanctions are adequate to fulfill the policies and purposes set forth in this Compact.
- (3) Any gaming activity approved in writing by the Governor and the Tribe shall be incorporated into and deemed a part of this Compact.

(C) In the event that any Class III gaming authorized under 4(A) or 4(B) is prohibited by state or federal law, the Tribe shall not conduct such gaming.

(D) Except as set forth in 4(B), the Tribe may not conduct Class III gaming not expressly enumerated in 4(A) of this Compact unless this Compact is amended pursuant to Section 9 of this Compact.

Section 5. REGULATION OF CLASS III GAMING.

(A) The following regulatory requirements shall apply to the conduct of Class III gaming authorized by this Compact. The Tribe shall maintain as part of its lawfully enacted ordinances, at all times in which it conducts any authorized Class III gaming, requirements at least as restrictive as those set forth herein.

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

(a) is under the age of 18;

(b) has, within the immediately preceding ten years, been convicted of or entered a plea of guilty or no contest to: a felony, any gambling-related offense, fraud or misrepresentation or any violation of Subchapter XI of Chapter 14 of the North Carolina General Statutes, unless the person has been pardoned.

(2) The Tribe shall publish the odds and prize structure of each Class III game, which publication shall be prominently displayed on every game.

(3) The Tribe shall maintain the following records for a period of five years. All accounting records shall be kept on a double entry system of accounting, maintaining detailed, supporting, subsidiary records.

(a) Revenues, expenses, assets, liabilities and equity for the location at which Class III gaming is conducted;

(b) Daily cash transactions for each game at the location at which Class III gaming is conducted;

(c) Individual and statistical game records for all games;

- (d) Records of all tribal enforcement activities;
- (e) All audits prepared by or on behalf of the Tribe;
- (f) Contracts, correspondence and other transaction documents relating to all vendors and contractors; and
- (g) Personnel information on all Class III gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.
- (h) All personnel employed by the Tribe whose responsibilities include the operation or management of Class III games shall be licensed by the Tribe. The Tribe shall publish and maintain a procedural manual for such personnel, which includes disciplinary standards for breach of the procedures.

(4) No person under the age of 18 may purchase a ticket or otherwise participate in any Class III game.

(5) No person under the age of 18 shall be permitted in the gaming area of the gaming facility where any component of Class III gaming is conducted; provided that this subsection shall not apply to locations at which sales of tickets is the only component of Class III gaming.

(6) If any person below the age of 18 plays and otherwise qualifies to win any Class III game, the prize shall not be paid, and the estimated amount wagered during the course of the game shall be returned to the minor.

(7) No person who is employed by the Tribe or any of its vendors or contractors or license holders in connection with Class III gaming shall be permitted to participate in any Class III gaming, and they shall not be permitted to collect any prize.

(8) The Tribe shall not conduct or possess any Class III games or components thereof outside of the Eastern Cherokee Lands except when transporting such games to or from the manufacturer, a certified testing laboratory, or to a certified repair facility. This prohibition shall include the use of common carriers (such as telecommunications, postal or delivery services) for the

purpose of sale of a ticket or playing card to, or placement of a wager by, a person who is not physically present on Eastern Cherokee Lands to purchase the ticket or card or place the wager.

(9) All gaming shall be conducted on a cash only, no credit, basis. Except as herein provided, no person shall be extended credit for gaming by any facility operated by the Tribe, its employees or its agents or any independent contractor employed by the Tribe operated on any Indian land over which the Tribe or Bureau of Indian Affairs has jurisdiction for the benefit of the Tribe, and no operator shall permit any person or organization to offer such credit for a fee. However, nothing herein shall prohibit the use of cash machines operated by federally regulated and licensed banks or lending institutions.

(10) The Tribe shall engage an independent certified public accountant to audit the books and records of all Class III gaming conducted pursuant to this compact and shall make copies of the audit and all current internal accounting and audit procedures available to the State upon written request. The Tribe shall permit the State to consult with the auditors before or after any audits or periodic checks on procedures which may be conducted by the auditors, and shall allow the State to submit written or oral comments or suggestions for improvements regarding the accounting and audit procedures. Within 30 days of receipt of any written or oral comments, the Tribe shall: (a) accept the comments and modify the procedures accordingly; or (b) respond to the comments with counter-proposals or amendments. The State shall pay for any additional work performed by the auditors at the request of the State;

(11) Background investigations. The Tribe, prior to placing a prospective employee whose responsibilities include the operation or management of Class III games, shall conduct a background investigation in accordance with the Tribe's gaming ordinance and in compliance with the Act and pertinent regulations promulgated by the National Indian Gaming Commission (NIGC) consistent with the Memorandum of Understanding between the NIGC and the Eastern Band executed by the Tribe on January 31, 1994. If employed, each person whose responsibilities include the operation or management of Class III games shall be subject to such periodic review as may be required by the NIGC and appropriate tribal and federal regulations applicable thereto. Employees found to have been convicted of any violation described in 5(A)(1)(a) and

(b) shall not be permitted to continue their employment. The State may submit information or objections to the Tribe which must be considered by the Tribe concerning any entity or person applying for a license from the Tribe. The Tribe shall respond to the State's information or objections, in writing, prior to making a final decision on the granting of any license to any entity or person.

(B) The regulatory requirements set forth in 5(A) and (B) of this Compact shall be administered and enforced as follows:

(1) The Tribe shall have primary responsibility to administer and enforce the regulatory requirements set forth in 5(A) and 5(B).

(2) The state of North Carolina shall have the right to monitor the Tribe's Class III gaming to ensure that the Tribe is administering and enforcing the regulatory requirements set forth herein. The State shall have the right to inspect all premises on which Class III gaming is conducted and the right to inspect and copy all tribal records relating to Class III gaming.

(3) The Tribe shall have the right to inspect and copy State records available under the North Carolina Public Records laws concerning all Class III gaming of the Tribe; provided that the State may withhold access to records created or maintained in conjunction with an ongoing criminal investigation and any prosecution resulting therefrom.

(4) In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 9 of this Compact.

(C) The Tribe shall own and operate all Class III games located on the Eastern Cherokee Lands. However, nothing herein shall prohibit the Tribe from entering into a management agreement in accordance with the Act.

(D) One Class III gaming facility shall be permitted to be operated on the Eastern Cherokee Lands. The Tribe shall determine the location of the gaming facility on the Eastern Cherokee Lands. The Class III gaming facility shall meet the following minimum conditions. The gaming facility shall have a Class III gaming area containing not more than 60,000 square feet open to the public, not including count rooms or administrative offices. The tribal gaming facility shall meet all North Carolina standards for construction, fire and safety.

The tribal gaming facility shall contain facilities for serving meals to patrons and shall have adequate on-site parking to accommodate the maximum Class II and Class III gaming participants who may be accommodated by the gaming facility. The gaming facility shall contain an amusement or caretaking facility adjacent to but segregated from all gaming areas, which shall be available for use by minors not eligible to enter a gaming area.

In the event the Tribe determines that the one facility is inadequate to meet the demand by tourists and persons seeking to engage in lawful Class III gaming, the Tribe shall have the right to request the State to amend the Compact to provide for an additional facility of like size or an increase in the maximum space for Class III gaming in the facility. Such request shall not be submitted to the State until the Tribe has twenty-four months experience in the operation of the Class III facility, with the request based upon a showing of economic justification of undercapacity of the facility for the demand by the public. Such request, if justified, shall not be unreasonably denied by the State.

(E) No Class III game may be played by a player who uses a credit card rather than currency or coin to participate in the game.

Section 6. REGULATION OF VIDEO GAMES.

(A) The Tribe shall purchase video game equipment only from a manufacturer certified by an independent testing laboratory. All video game equipment owned and operated by the Tribe shall include an internal computerized accounting system which shall be monitored by the Tribe and/or its independent certified public accountant firm through on-line computer terminals.

(B) Non-complying Video Games. The following are declared to be non-complying video games:

- (1) all video games to which agents of the State have been denied access for inspection purposes.
- (2) all video games operated in violation of this compact.
- (3) any game not certified by Certification Commission.

Any game deemed to be out of compliance by the State (not the Certification Commission) shall be inspected by an independent gaming test laboratory as provided below within three days of receipt of notice of non-compliance. If the independent laboratory finds that the video game or related equipment is

non-complying, the non-complying equipment shall be permanently removed from play unless modified to meet the requirements of this Compact. Video games and related equipment removed from play and modified pursuant to this section may be returned to play only after inspection by the State, under the guidance of the Certification Commission and an independent gaming test laboratory.

(C) Testing and Approval of Video Games. No video game may be purchased, leased or otherwise acquired by the Tribe unless the video game, or a prototype thereof, has been tested and approved or certified by the Certification Commission and a gaming test laboratory as meeting the requirements and standards of this Compact. For purposes of this Compact, a gaming test laboratory is a laboratory agreed to and designated in writing by the State and the Tribe as competent and qualified to conduct scientific tests and evaluations of video games and related equipment.

(D) Application for Approval of Prototype Video Games. The Tribe shall provide or require that the manufacturer provide to the independent gaming test laboratory two copies of video game illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format) and any other information requested by the gaming test laboratory.

(E) Testing of Video Games. If required by the independent gaming test laboratory, the Tribe shall require the manufacturer to transport not more than two working models of the video game and related equipment to a location designated by the laboratory for testing, examination and analysis. The Tribe shall require the manufacturer to pay for any and all costs for the transportation, testing, examination, and analysis. The testing, examination and analysis may include the entire dismantling of the video games and related equipment and some tests may result in damage or destruction to one or more electronic components of the devices. If required by the laboratory, the Tribe must require the manufacturer to provide specialized equipment or services of an independent expert to assist with the testing, examination and analysis.

(F) Report of Test Results. At the conclusion of each test, the laboratory shall provide to the State and the Tribe a report that contains the findings, conclusions and a determination that the video game and related equipment conforms or fails to conform to the technical requirements and standards set forth in this Compact. If modifications can be made which would bring the video game or related equipment into compliance, the report may contain recommendations for such modifications.

(G) Modifications of Approved Video Games. The manufacturer or distributor shall assemble and install all video games and related equipment in a manner approved and licensed by the Tribe. No modification to the assembly or operational functions of any video game or related equipment may be made after testing and installation unless the Certification Commission and an independent gaming test laboratory certifies to the State and the Tribe that the modified video games conform to the standards of this Compact. All proposed modifications shall be described in a written request made to the State, the Certification Commission and an independent gaming test laboratory containing information describing the modification, the reason therefor and all documentation required by the laboratory. In emergency situations where modifications are necessary to prevent cheating or malfunction, the laboratory may grant temporary certification of the modification for up to 15 days pending compliance with this section.

(H) Conformity to Technical Standards. The Tribe shall require the manufacturer or distributor to certify, in writing, to the Tribe and to the State that, upon installation, each video game placed in a gaming facility within the Eastern Cherokee Lands: (1) conforms precisely to the exact specifications of the video game prototype tested and approved by the testing laboratory; and (2) operates and plays in accordance with the technical standards set forth in this Compact.

(I) Prizes. Prizes may be awarded only in the form of free games, credits, or cash. A prize may not exceed the value of \$25,000 for each individual award. Video gaming devices may be connected in a progressive bank provided the prize limit for the progressive bank does not exceed \$25,000.

(J) Existing Video Games. Video games or prototypes thereof, operated within the Eastern Cherokee Lands after the effective date of this Compact must be tested and approved by the Certification Commission and an independent gaming test laboratory as required by this Compact. If the existing video games do not comply with the standards of this Compact they shall be brought into compliance prior to their use after the effective date of this Compact or replaced with complying equipment. In no event shall the Tribe knowingly permit non-complying games to be operated on Eastern Cherokee Lands. The Tribe may continue to operate at pre-existing gaming facilities with complying equipment without meeting the facility restrictions set forth in Section 5(D) until thirty (30) days after the opening of the tribal facility as set forth in Section 5(D), with such continued operations to not extend, under any circumstances without written consent of the State,

beyond two years from the date of publication of this Compact in the Federal Register.

(K) Information to be Provided. Prior to the installation of any video game acquired by the Tribe after the effective date of this Compact, and for any video game operated within Eastern Cherokee Lands on or before the effective date of this Compact, the Tribe shall provide, or require that the manufacturer or distributor provide to the State:

(1) A list of all states in which the distributor or manufacturer from whom the video games were acquired is licensed, the license numbers (if license numbers are issued) and operative dates of the license(s); and

(2) Identification numbers or codes for each video game placed on Eastern Cherokee Lands.

(L) Hardware Requirements for Video Games. Video games operated within Eastern Cherokee Lands must be licensed by the Tribe to meet the following specifications:

(1) No Physical Hazard. Electrical and mechanical parts and design principles may not subject a player to any physical hazards.

(2) Surge Protectors. A surge protector device must be installed for all power which is fed to the device.

(3) Battery Back-up. A battery back-up, or an equivalent for the electronic meters must be capable of maintaining accurate reading for 180 days after power is discontinued from the device for all information regarding:

- (a) current and total tallies of amounts wagered and paid out;
- (b) records of access to the logic board component;
- (c) records of access to the cash and coin component;
- (d) such other data as may be required by written regulation of the Tribe.

The back-up device shall be located within the locked logic board compartment and shall not be accessible to the manufacturer or distributor after the initial installation of the equipment.

(4) Power Switch. A power switch must be located in an accessible place within the interior of the game which controls the electrical current used in the operation of the game.

(5) Resistance to Electromagnetic Interference. The operation of the video game, including the coin drop and other such component parts, must not be adversely affected by static discharge, radio frequency interference or other electromagnetic interference.

(6) Approved Coin and Bill Acceptors. At least one electronic or mechanical coin acceptor must be installed in or on each video game. The devices may also contain bill acceptors for denominations determined by the Tribe. Prior to operation within Eastern Cherokee Lands, all models of coin and bill acceptors installed must have been tested and approved in writing by an independent gaming test laboratory as provided by this Compact.

(7) Secure Cabinets. The internal space of the video game shall not be readily accessible when the door is closed and sealed.

(8) Secure Electronic Components. Logic Boards and software, electronically programmable read only memory chips (hereinafter (EPROMS)) and other logic control components shall be located in a separate compartment within the video game and that compartment shall be locked with a different key or combination than that used for the main cabinet.

(9) Secure Cash Compartment. The coin and currency compartment shall be secured with a different key or combination than that used for the main cabinet door, except that a separate cash compartment shall not be required for coins necessary to pay prizes in a machine which pays prizes through a drop hopper.

(10) No Hardware Modification of Pay Tables or Payouts. No hardware switches (DIP Switches) may be installed which alter the pay tables or payout percentages for the game.

(11) Printed Record of Credits and Payouts Required. A single printing mechanism which must be capable of printing an original ticket and retaining an exact, legible copy, either within the game or in a management/reporting system approved by the independent gaming test laboratory, that provides permanent sequential tracking, and which permits monitoring of error conditions on a printed medium for future use, and which records the following information: (a) the number of credits; (b) value of the credits in dollars and cents; (c) the cash paid by the device; and (d) any other data required by the Tribe. Video games utilizing coin drop hoppers are permitted, provided they are monitored by a management/reporting system of the type described in this

paragraph which has been approved by an independent gaming test laboratory.

(12) Identification Plates Required. Each video game shall have an unremovable identification plate on the exterior of the cabinet which contains the following information:

- (a) Manufacturer;
- (b) Serial number;
- (c) Model number;
- (d) License stamp and number issued by the Tribe certifying compliance with the technical standards set forth in this Compact.

(13) Rules of Play and Possible Winnings Displayed. The rules of play for each game must be prominently displayed on the game screen or the cabinet face. The Tribe shall not permit the display of any rules of play which are incomplete, confusing, or misleading. Each game must display the coins or credits wagered and the credits awarded for the occurrence of each possible winning combination based on the amount wagered. All information required by this section must be kept under glass or other transparent substance and at no time shall stickers or other such materials be placed on the machine face which obscure the rules of play or the operational features of the game.

(14) Security Tape for EPROMS. Upon installation, the Tribe shall affix or cause to be affixed to the EPROM of each video game a strip of security tape, capable of evidencing the removal of the EPROM if the EPROM is removed from the circuit board. The security tape shall be secured and available only to the authorized personnel of the Tribe. The Tribe shall maintain accurate and complete records of the identification number of each EPROM installed in each video game.

(15) No Credit Card Meters Permitted. No video game may be equipped with a device which permits the player to use a credit card rather than currency or coin to activate the game.

(M) Software Requirements for Video Games. Video games operated within the Eastern Cherokee Lands must meet the following software specifications:

(1) Software Requirements for Percentage Payout. Each video game must meet the following maximum and minimum theoretical percentage pay out during the expected lifetime of the game.

Each video game machine shall pay out a minimum of 83 percent and no more than 98 percent of the total amount wagered over the expected life of the machine, including replays. This standard is met when using a method of play which will provide the greatest return to the player.

(2) Software Requirements for Continuation of Game After Malfunction. Each video game must be capable of continuing the current game with all current game features after a game malfunction is cleared automatically or by an attendant.

(3) Software Requirements for Play Transaction Records. Each game shall maintain electronic accounting meters. Such meters shall be maintained at all times, whether or not the game is being supplied with external power. The following information must be recorded and stored on meters capable of maintaining totals no less than eight digits in length:

- (a) Total number of coins inserted (the meter must count the total number of coins, or the equivalent value if a bill acceptor is used, which are inserted by players);
- (b) Number of credits wagered;
- (c) Number of credits won;
- (d) Credits paid out by printed ticket voucher or cash paid by the device.

(4) The following information must be recorded and stored on meters capable of maintaining totals no less than six digits in length:

- (a) Number of times the logic area was accessed;
- (b) Number of coins or credits wagered in the current game;
- (c) Number of coins or credits wagered in the last complete, valid game; and
- (d) Number of cumulative credits representing credits won and money inserted by a player but not collected, commonly referred to as the credit meter.

(5) No Automatic Clearing of Accounting Meters. No video game shall have a mechanism or program which will cause the electronic accounting meters to automatically clear. The electronic accounting meters may be cleared only after written records of the readings before and after the clearing process are taken by the Tribe, which shall also record the reason the meter was cleared.

(N) Amendments to Hardware and Software Requirements for Video Games. The technical standards set forth in the above sections shall govern the operation of video games unless amended pursuant to the appropriate provisions of this Compact.

(O) Certification Commission. A video game authorized under this agreement shall be tested and approved by the Certification Commission as meeting the skill/dexterity requirement of 3(H) of this Compact. The Commission shall consist of 3 members. The Governor shall appoint one member, the Principal Chief shall appoint one member, and the third member shall be approved by both the Governor and the Principal Chief. The appointments shall be made within thirty (30) days of the signing of this Compact.

The Certification Commission shall have the authority to inspect the gaming devices proposed for use on Eastern Cherokee lands to ensure compliance with this Compact and shall issue a written approval or disapproval for any video game proposed by or for the Tribe. Approval by the Commission is a prerequisite for gaming operation on Eastern Cherokee Lands. The Commission shall have the authority to call upon the technical resources of the State or Tribe to assist it in fulfilling its duties under this Compact.

The Commission shall meet within fifteen calendar days of written request by the Tribe or a video game manufacturer for the purpose of reviewing any proposed video game. The Commission shall issue a decision on any such application within fifteen calendar days of such meeting.

The Commission members shall be compensated, including per diem, by the Tribe for their expenses in carrying out their duties.

Section 7. REGULATION OF RAFFLES.

(A) Raffles shall consist of a game in which a cash prize is won by the random drawing of the name or number of one or more persons purchasing chances.

(B) In no event shall the prize limit for a raffle game exceed \$5,000 in cash or \$25,000 in merchandise.

(C) No electronic versions of raffles shall be permitted or conducted by the Tribe, its agents or employees.

Section 8. APPLICATION OF STATE LAWS.

(A) State civil and criminal laws shall be applicable to and enforceable by the State against any person for activities

relating to Class III gaming which occur outside of Eastern Cherokee Lands.

(B) State criminal laws and regulatory requirements shall be applicable to and enforceable by the State against any person who is not a member of the Tribe for activities relating to Class III gaming which occur on tribal lands.

(C) In order to administer and enforce state laws as set forth in Sections 8(A) and 8(B) of this Compact, the State may investigate the activities of tribal officers, employees, vendors or gaming participants who may affect the operation or administration of tribal gaming, and shall report suspected violations of state, tribal or federal laws to the appropriate state, tribal or federal prosecution authorities. Pursuant to such investigation, the State may seek subpoenas, in accordance with state law, to compel the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which are relevant or material to the investigation.

(D) The State shall have concurrent jurisdiction to commence prosecutions for violation of any applicable state civil or criminal law or regulatory requirement as set forth in the Sections 8(A) and 8(B) of this Compact.

(E) In order to administer and enforce state laws as set forth in Section 8 of this Compact, any papers required by law to be served may be served on tribal lands by any employee or agent of the State. The State shall notify the Tribe of such service as soon thereafter as possible, unless such service relates to an ongoing criminal investigation or prosecution.

(F) The provisions of this Compact shall not be construed so as to create criminal jurisdiction over any person except as it presently exists under federal and state law.

(G) Except as expressly provided herein, this Compact shall not be construed to limit any jurisdiction or remedies available to either party pursuant to the terms of the IGRA or other applicable law.

(H) Nothing contained in this Compact shall be construed to limit the civil or criminal jurisdiction of the federal government in enforcing any applicable federal statute or regulation.

Section 9. AMENDMENTS.

The terms and conditions of this Compact shall not be modified, amended or otherwise altered except by written agreement of the parties and enactment as set forth in Sections

4(B) and 12 of this Compact. Either the Tribe or the State may request a renegotiation of the terms of the Compact based upon a change in federal or State law that alters gaming permitted by the laws of the state.

Section 10. DISPUTE RESOLUTION.

(A) If after the effective date of this Compact the State believes a gaming activity being conducted by the Tribe is in violation of the terms of the Compact, the State shall give notice to the Tribe to cease and desist such gaming activity and the State and the Tribe shall determine the validity of the State's objection in the following manner:

(1) The State shall notify the Tribe in writing of the gaming activity deemed to be in violation of the Compact, the reasons for or manner of violation by the activity, and a requested method of correcting the violation.

(2) The Tribe shall respond to the notice in writing within twenty days from receipt. Such response shall be in writing, signed by the Principal Chief of the Tribe, and shall either concur in the non-compliance and provide written assurances of prompt action to cure the non-compliance, or contest the allegation of the violation.

(3) Nothing in this section shall limit the rights or remedies available to the parties under the Act.

(B) In the event either party believes that the other party has failed to comply with any requirement of this Compact, it may invoke the following procedure:

(1) The party asserting noncompliance 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 of the alleged noncompliance. The State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

(2) In the event the dispute is not resolved to the satisfaction of the parties within ninety (90) days after service of the notice set forth in Section 10(B)(1), either party may pursue any remedy which is otherwise available to that party to enforce or resolve disputes concerning the provisions of this Compact, and nothing in this Compact shall be interpreted to limit in

any way the rights and remedies of the Tribe or the State under federal or state law.

(3) Nothing in Section 10(A) or 10(B) shall be construed to waive, limit or restrict any remedy which is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nor shall Section 10(A) or 10(B) be construed to preclude, limit or restrict the ability of the parties to pursue, by mutual agreement, alternative methods of dispute resolution, including but not limited to mediation or arbitration; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

(C) Both the Tribe and the State agree that in the event that a dispute arises as to an interpretation of the provisions of this Compact, or as to any of the rights, responsibilities or obligations attaching to the parties hereto, either party may commence an action in federal district court for the purpose of resolving such dispute.

Section 11. CHOICE OF LAWS.

The Tribe and the State agree that laws of the State of North Carolina shall be applied in any action arising from this Compact, however, this provision does not preclude the application or interpretation of applicable federal law.

Section 12. EFFECTIVE DATE.

This Compact shall be effective upon:

(A) Signature by the Principal Chief of the Eastern Band of Cherokee Indians, Signature by the Governor of the State of North Carolina and compliance with all of the requirements of 11(d)(3)(B) of the Act, 25 U.S.C. 2710(d)(3)(B).

Section 13. DURATION.

(A) This Compact shall be in effect for a period of seven (7) years from the effective date.

(B) The duration of this Compact shall thereafter be automatically extended for periods of five (5) years; unless either party serves written notice of nonrenewal on the other party based upon changes in federal or state law that alters gaming permitted by the laws of the state not less than one hundred eighty (180) days prior to the end of the applicable period.

(C) In the event written notice is served as set forth in Section 13(B), all Class III gaming shall cease at the end of the applicable period.

(D) In the event the State serves written notice of nonrenewal on the Tribe, nothing in this Compact will prohibit the Tribe from seeking to extend or renew Class III gaming under applicable provisions of the Indian Gaming Regulatory Act or regulations promulgated thereunder.

Section 14. NOTICES.

All notices required or authorized to be served shall be served by first class mail at the following addresses:

Principal Chief
Eastern Band of Cherokee Indians
Post Office Box 455
Cherokee, North Carolina 28719

Governor
State Capitol
Raleigh, North Carolina 27611

Section 15. SEVERABILITY.

In the event that any section of this Compact is held invalid, it is the intent of the parties that the remaining sections of the Compact shall continue in full force and effect.

Section 16. TRIPPLICATE ORIGINALS.

This Compact shall be executed in triplicate originals, one for each of the signatories. Each and all are equally valid.

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

Dated: Aug. 4, 1994
STATE OF NORTH CAROLINA

Dated: August 11, 1994
EASTERN BAND OF CHEROKEE INDIANS

By: [Signature]
James B. Hunt, Jr.
Governor

By: [Signature]
Jonathan L. Taylor
Principal Chief

Attest:
[Signature]
Rufus Edmisten
Secretary of State

Approved as to form and procedure for the State:
By: [Signature]
Michael F. Easley
Attorney General

Approved as to form and procedure for the Tribe:
By: [Signature]
Ben O. Bridgers
Tribal Attorney

Approved this 22nd day of September, 1994.

By: [Signature]
ADA E. DEER
ASSISTANT SECRETARY - INDIAN AFFAIRS

CERTIFICATE
OF
EASTERN BAND OF CHEROKEE INDIANS

I, Gerard Parker, do hereby certify that:

1. I am the duly elected Vice-Chief of the Eastern Band Cherokee Indians (the "Tribe").
2. The foregoing is a true and correct copy of the Tribal - State Compact which was duly adopted by the Tribe, is in full force and effect on the date hereof, and has been in effect since August 11, 1994.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of November, 1996.

[Signature]

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CHEROKEE INDIANS

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

This AMENDMENT made and entered into this the 23rd day of May, 1996, to that TRIBAL - STATE COMPACT executed by the parties in August 1994 which was approved by the Secretary of the Interior on September 22, 1994, by and between the Eastern Band of Cherokee Indians, a federally recognized Indian tribe (hereafter "Tribe"), acting through its Principal Chief, the Honorable Joyce C. Dugan, and the State of North Carolina (hereafter "State"), acting through its Governor, the Honorable James B. Hunt Jr.;

WITNESSETH:

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

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

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

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

The Compact previously entered between the Tribe and State shall be and is hereby amended by mutual consent and agreement of the parties in the following respects:

First Amendment:

Section 6, (0) shall be amended as follows:

1. Insert a new paragraph between the first and second paragraphs to read as follows:

The initial commissioners shall serve initial terms as follows: The appointee of the Principal Chief shall serve until September 30, 1997; the appointee of the Governor shall serve until September 30, 1998 and the joint appointee of the Governor and the Principal Chief shall serve until September 30, 1999. The initial commissioners shall be eligible for reappointment to a full term. Following the staggered terms provided for the initial commissioners as set forth above, the full term of a commissioner shall be for five (5) years and until a successor is appointed or until removal by his or her appointing authority.

2. Delete the fourth and last paragraph, consisting of one sentence.

3. Add a new fourth paragraph to read as follows:

The Certification Commission shall be authorized to retain independent legal counsel to advise the Commission on legal issues and matters presented to the Commission on an as needed basis with the request for such services and compensation to be approved by the Tribal Council.

4. Add a new fifth paragraph to read as follows:

The Commission members shall be compensated by the Tribe for their services. The Commission shall be compensated at a rate to be established by the Tribal Council.

5. Add a new sixth paragraph to read as follows:

Modifications of the following technical features on video games already approved for play by the Certification Commission may be approved by letter signed by the Chairman when the independent testing laboratory has notified all commissioners in writing of successful testing under the terms of the Compact of the following hardware modifications: coin or bill acceptor modifications, progressive modifications, security features involving software functions, none of which will affect skill or dexterity features or the play of the game as originally approved by the Commission and will otherwise meet the standards and requirements of the Compact.

Second Amendment:

Section 6. (J) shall be amended as follows:

Replace the comma in the fourth sentence with a period and strike the remaining words in the sentence so that the sentence shall read:

The Tribe may continue to operate at pre-existing gaming facilities with complying equipment without meeting the facility restrictions set forth in Section 5 (D) until thirty (30) days after the opening of the tribal facility as set forth in Section 5 (D).

Third Amendment:

Section 13. (A) shall be amended as follows:

The sentence shall be rewritten to read as follows:

The duration of this Compact shall be for a period of seven (7) years from the issuance of a Certificate of Completion for the facility authorized in Sec. 5 (D) by the Architect of Record. In no event shall this term exceed ten-(10) years from the execution of this amendment.

Fourth Amendment:


Section 8. (B) shall be amended as follows:


Delete the semicolon following the word "by."

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

Dated: 5-16-96
STATE OF NORTH CAROLINA

Dated: 5-28-96
EASTERN BAND OF CHEROKEE INDIANS

By: 
James B. Hunt Jr.
Governor

By: 
Joyce C. Dugan
Principal Chief

Attest:

By:

Janice H. Faulkner

Janice H. Faulkner
Secretary of State

Approved as to form and
procedure for the State:

Michael F. Basley

Michael F. Basley
Attorney General

Approved as to form and
procedure for the Tribe:

Ben Oshel Bridgers

Ben Oshel Bridgers
Tribal Attorney

Approved this the _____ day of _____, 1996.

By:

Ada E. Deer
Assistant Secretary of the Interior
Indian Affairs

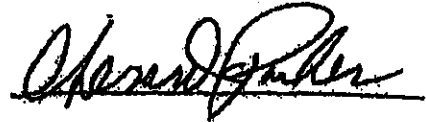
CERTIFICATE
OF
EASTERN BAND OF CHEROKEE INDIANS

I, Cerard Parker, do hereby certify that:

1. I am duly elected Vice-Chief of the Eastern Band of Cherokee Indians (the "Tribe").

2. The foregoing is a true and correct copy of the Amendment To Tribal - State Compact, which was duly adopted by the Tribe, is in full force and effect on the date hereof, and has been in effect since May 28, 1996.

IN WITNESS WHEREOF, I have hereunto set my hand this 12 day of November, 1996.



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

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

WITNESSETH:

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

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

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

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

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

First Amendment:

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

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

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

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

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

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

Second Amendment:

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

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

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

(a) is under the age of 21.

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

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

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

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

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

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

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

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

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

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

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

- 9) Section 5.(C) shall be amended as follows:
By striking the period in the last sentence of the paragraph with a comma and adding the following language:
- or leasing agreements with the owners of intellectual property on specific game types.
- 10) Section 5.(D) shall be amended as follows:
The first paragraph shall be rewritten to read as follows:
- One Class III gaming facility shall be permitted to be operated on the Eastern Cherokee Lands. The Tribe shall determine the location of the gaming facility on the Eastern Cherokee lands. The tribal gaming facility shall meet all North Carolina standards for construction, fire and safety.
- The third paragraph shall be stricken in its entirety.
- 11) Section 5.(E) shall be amended as follows:
By adding a second sentence to read as follows:
- However, nothing herein prohibits the use of credit card cash advance systems as provided for in Section 5.(A)(9) of this Compact.

Third Amendment:

- 12) Section 6.(A) shall be amended as follows:
The first sentence shall be rewritten to read as follows:
- The Tribe shall purchase video game equipment only from a distributor or manufacturer. All such equipment must be certified by an independent testing laboratory.
- 13) Section 6.(C) shall be amended as follows:
The paragraph shall be rewritten to read as follows:
- Testing and Approval of Video Games. No video game may be purchased, leased or otherwise acquired by the Tribe unless the video game, or a prototype thereof, has been tested and approved or certified by the Certification Commission and a gaming test laboratory as meeting the requirements and standards of this Compact as allowed under NCGS 14-306(b) and 14-306.1 or as subsequently amended by the North Carolina

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

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

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

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

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

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

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

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

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

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

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

Fourth Amendment:

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

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

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

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

Fifth Amendment:

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

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

Sixth Amendment:

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

Section 17. HOTELS AND PLANNING ORDINANCES.

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

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

Seventh Amendment:

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

Section 18. CREATION OF FOUNDATION.

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

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

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

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

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

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

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

- (2) The two Directors selected from a list of six enrolled members nominated by the Principal Chief to the Governor each shall serve an initial term expiring the 31st day of December, 2003. Each successive term thereafter shall be four years and shall expire on each succeeding fourth anniversary of December 31, 2003. If one of these appointees leaves office for any reason, then the Principal Chief of the Eastern Band of Cherokee Indians shall submit to the Governor a list of three names of enrolled members of the Tribe and the Governor shall appoint one of the three nominees to complete the term of the departed Director.
- (3) The two Directors chosen at large by the Governor from among the enrolled members of the Eastern Band of Cherokee Indians each shall serve an initial term expiring the 31st day of December, 2004. Each successive term thereafter shall be four years and shall expire on each succeeding fourth anniversary of December 31, 2004. If one of these appointees leaves office for any reason, then the Governor shall appoint a replacement from among the enrolled members of the Eastern Band of Cherokee Indians to complete the term of the departed Director.
- (4) The three individuals chosen at large by the Governor each shall serve an initial term expiring the 31st day of December, 2005. Each successive term thereafter shall be four years and shall expire on each succeeding fourth anniversary of December 31, 2005. If one of these appointees leaves office for any reason, then the Governor shall appoint a replacement at large to complete the term of the departed Director.

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

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

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

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

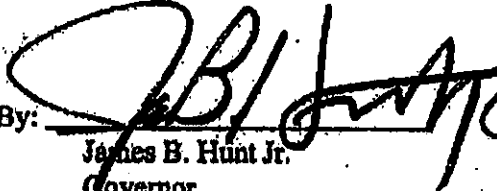
IN WITNESS WHEREOF, the State of North Carolina and the Eastern Band of Cherokee Indians have hereto set their hands and seals.

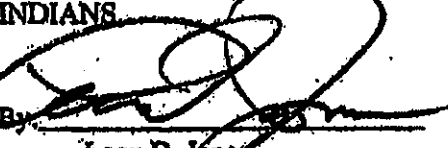
Dated: November 14, 2000

Dated: November 14, 2000

STATE OF NORTH CAROLINA

EASTERN BAND OF CHEROKEE INDIANS

By: 
James B. Hunt Jr.
Governor

By: 
Leon D. Jones
Principal Chief

Attest:
By: *Elnie F. Marshall*
Elnie F. Marshall
Secretary of State

(The Great Seal of the
State of North Carolina)

Approved as to form and
Procedure for the State:

By: *Michael Easley*
Michael Easley
Attorney General

Approved as to form and
Procedure for the Tribe:

By: *Ben Oshel Bridgers*
Ben Oshel Bridgers
Attorney for Tribe

Approved this the *28* day of *December*, *2010*

By: *Kerwin Stoney*
Assistant Secretary of the
Interior - Indian Affairs

**AGREEMENT AND AUTHORIZATION UNDER SECTION 4(B) OF
THE TRIBAL-STATE COMPACT BETWEEN
THE EASTERN BAND OF CHEROKEE INDIANS
AND THE STATE OF NORTH CAROLINA**

This Agreement and Authorization is made and entered into this the 8th day of July 2002 under Section 4(B) of the Tribal-State Compact executed by the parties in August 1994 which was approved by the Secretary of the U.S. Department of Interior on September 22, 1994 and first amended on May 28, 1996 and subsequently amended on November 14, 2000, by and between the Eastern Band of Cherokee Indians, a federally recognized Indian tribe (hereafter "Tribe"), acting through its Principal Chief, the Honorable Leon D. Jones, and the State of North Carolina (hereafter "State") acting through its Governor, the Honorable Michael F. Easley;

WITNESSETH:

WHEREAS, the Tribe made application under Section 4(B) of the Tribal-State Compact for authorization to operate games that are not expressly enumerated under Section 4(A) of the Compact; and,

WHEREAS, the Tribe made this request to clarify the operation and play of particular games which falls outside the jurisdiction of the Certification Commission granted to it under the original Compact; and,

WHEREAS, the proposed gaming activities are permitted under the laws of the State of North Carolina, and are in accordance with the Indian Gaming Regulatory Act at 25 U.S.C. § 2701 *et. seq.*, and § 71A-8 of the North Carolina General Statutes; and,

WHEREAS, existing regulatory controls and criminal sanctions are adequate to fulfill the policies and purposes set forth in the Compact.

NOW THEREFORE, THE EASTERN BAND OF CHEROKEE INDIANS is hereby authorized by THE STATE OF NORTH CAROLINA under Section 4(B) of the Tribal-State Compact to conduct the following games;

- Electronic Bingo games which comply with the statutory definition of bingo in N.C.G.S. § 14-309.6.
- Electronic Raffle games which comply with the statutory definition of raffles in N.C. G.S. § 14-309.15(b).

All such games may be played and operated within the Tribe's facility, provided that the Tribe shall first receive the Tribal Gaming Commission's game approval as well as Gaming Laboratories International certification as stated in the original Compact prior to placing any game into operation.


In accordance with Section 4(B)(3) of the Compact, this writing shall be incorporated into and made part of the Tribal-State Compact upon signature of the parties.

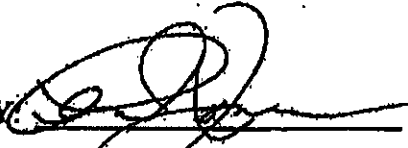
IN WITNESS WHEREOF, the State of North Carolina and the Eastern Band of Cherokee Indians have hereto set their hand and seals.

Dated this 8th day of July, 2002.

STATE OF NORTH CAROLINA

EASTERN BAND OF CHEROKEE INDIANS

BY: 
Michael F. Basley
Governor, State of North Carolina

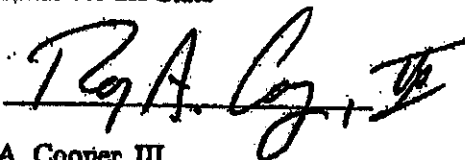
BY: 
Leon D. Jones
Principal Chief, Eastern Band of Cherokee Indians

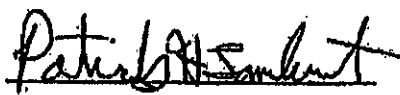
ATTEST:


Elaine F. Marshall
Secretary of State, State of North Carolina

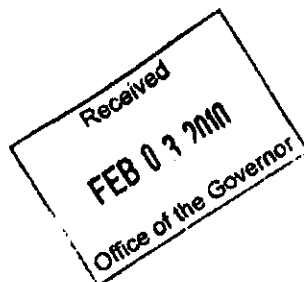
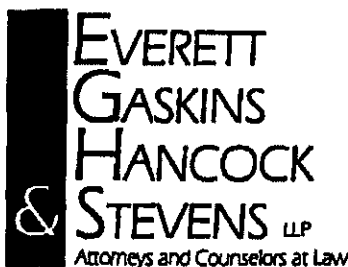
Approved as to form and Procedure for the State

Approved as to form and Procedure for the Tribe:

BY: 
Roy A. Cooper, III
Attorney General, State of North Carolina

BY: 
Patrick H. Lambert
Attorney for Tribes and Executive Director,
Tribal Gaming Commission

1167497



Hugh Stevens
hugh@eghs.com

3 February 2010

VIA FACSIMILE TO (919) 733-2120 AND VIA HAND DELIVERY

Honorable Beverly E. Perdue
 Office of the Governor
 20301 Mail Service Center
 Raleigh, NC 27699-0301

**RE: North Carolina's Tribal-State Gaming Compact with the
 Eastern Band of the Cherokee Indians**

Dear Governor Perdue:

We write on behalf of the New Vemco Music Company ("New Vemco"), a Fayetteville business, and its president, Ralph Amick. Prior to July 1, 2007, when a statewide ban on video poker took effect pursuant to G. S. § 14-306.1A, New Vemco lawfully owned and operated video poker machines in North Carolina.

We are writing to you because the Tribal-State Compact between the Eastern Band of the Cherokee Indians ("the Tribe") and the State of North Carolina requires notices concerning its content to be made to you as Governor.

As you know, the Compact came into existence as the result of the Cherokees' desire to exercise the rights given to them under the Federal Indian Gaming Regulatory Act (IGRA) (25 U.S.C. §§ 2701-2721; 18 U.S.C. §§ 1166-1168). IGRA permits tribes and states to enter into Class III gaming compacts only if a state "permits such gaming for any purpose by any person, organization, or entity." For example, G.S. § 14-309.15 regulates raffles in North Carolina. Therefore the Compact can and does authorize the Tribe to conduct raffles.

The 2000 amendment to Section 3.(H) of the Compact, which your predecessor Governor Easley negotiated and signed, defined "video games" allowed to be operated by the Tribe as those permitted for operation by G.S. § 14-306(b) and G.S. § 14-306.1. G.S. § 14-306(b), which permits the operation of video games, pinball machines and similar devices that are operated and played only for amusement, is still in effect. On the other hand, G.S. § 14-306.1, which authorized and regulated video poker, was repealed in 2006, thereby withdrawing the statutory authority for Tribal video poker referenced by the Compact.

In light of the foregoing we request that you immediately notify the Tribe that it must terminate its operation of the 3000+ video poker games at its Harrah's Casino.

EVERETT, GASKINS, HANCOCK & STEVENS, LLP

We also write on behalf of our clients to advise you of our opinion that both Governor Easley and Governor Hunt violated the "separation of powers" clause of the North Carolina Constitution (Article I, § 6) by negotiating, executing and amending the Compact, because that authority and duty rest with the General Assembly. This view is confirmed by the fact that each of North Carolina's more than 20 compacts with other states was approved by the General Assembly at their inception and by G.S. §147-12(14), whereby the General Assembly attempted in 2001 to ratify retroactively the unconstitutional acts undertaken by the Governor's office to negotiate and execute the Compact.

The "separation of powers" clause in the North Carolina Constitution prohibits the General Assembly from delegating away its legislative responsibilities. This would include any attempt to delegate negotiations with the Tribe. Therefore, we believe that both G.S. § 147-12(14) and the Compact are void or voidable because they were negotiated and executed in violation of the North Carolina Constitution.

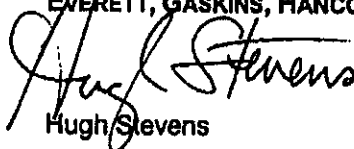
On or about September 1, 2009 you attended the grand opening of the Sequoyah National Golf Club, where you stated publicly that you were open to the possibility of negotiating expanded Class III gaming with the Tribe. In light of the separation of powers analysis set forth above we ask that you refrain from engaging in any and all future negotiations, revisions or amendments to the Compact with the Cherokees in order to avoid further violation of North Carolina's Constitution.

We also request, pursuant to the North Carolina Public Records Law, that we be provided as promptly as possible with copies of all records made or received by you or by anyone acting on your behalf or at your direction in connection with (1) any actual or potential negotiations or discussions with the Tribe or representatives of the Tribe related to additional or expanded gaming or (2) any potential or proposed amendments to the Compact.

We respectfully request that you review the issues addressed above and respond to us in writing no later than the close of business on February 16, 2008. If you do not respond by that time we will interpret your failure to respond as an indication that you disagree with our analyses and decline our requests.

Very truly yours,

EVERETT, GASKINS, HANCOCK & STEVENS, LLP


Hugh Stevens

C: Attorney General Cooper



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

BEVERLY EAVES PERDUE
GOVERNOR

February 16, 2010

Mr. Hugh Stevens
Everett, Gaskins, Hancock & Stevens, LLP
P O Box 911
Raleigh, NC 27602-0911

Re: Litigation Concerning the Cherokee Gaming Compact

Dear Hugh:

I am writing in response to your February 3, 2010, letter to the Governor on behalf of your client, New Vemco Music Company, in which you assert on Vemco's behalf that the State's Gaming Compact with the Eastern Band of the Cherokee is unlawful. In your letter you have briefly described two theories supporting your assertion on behalf of Vemco.

Based on my review of the law and discussions with the Attorney General's Office, I do not believe either theory you have advanced in support of your claim is viable.

You have also asked on behalf of your client for all records in the Governor's custody concerning "(1) any actual or potential negotiations or discussions with the Tribe or representatives of the Tribe related to potential or expanded gaming or (2) any potential or proposed amendments to the Compact." We will provide the non-privileged public records responsive to your request as soon as practicable given other pending public record requests and our limited resources.

Sincerely,

Edwin M. Speas, Jr.
General Counsel

EMSjr:vuj

cc: Grayson Kelley

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS 003520

McCRAKEN and AMICK, INCORPORATED
d/b/a THE NEW VEMCO MUSIC CO. and
RALPH AMICK,

Plaintiffs,

v.

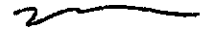
BEVERLY EAVES PERDUE, in her official
capacity as Governor of North Carolina

Defendants.

ACCEPTANCE OF SERVICE

RECEIVED
FEB 27 10 21 10

Edwin M. Speas, Jr., hereby states as follows:

AS PROCESS AGENT 

1. I, Edwin M. Speas, Jr., ~~counsel for defendant~~ Beverly Eaves Perdue, in her official capacity as Governor of North Carolina, hereby accepts service of the Summons and Complaint (10 CVS 003520) filed in the Superior Court of Wake County on February 25, 2010, and hereby waives any further service of process.

2. A copy of the complaint was received by me via hand delivery on the 26th day of February, 2010 at my office in Raleigh, North Carolina.

This the 26th day of February, 2010.



Edwin M. Speas, Jr.
General Counsel to Governor Beverly E. Perdue
Office of the Governor
116 West Jones Street
Raleigh, North Carolina

Respectfully submitted this the 12th day of March, 2010.

ROY COOPER
Attorney General



Mark A. Davis
Special Deputy Attorney General
State Bar No. 18142

N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
Telephone: (919) 716-6900
Facsimile: (919) 716-6763

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2010 DEC -2 AM 11:33 10 CVS 003520

McCRACKEN AND AMICK,
INCORPORATED d/b/a THE NEW
VEMCO MUSIC CO. AND RALPH
AMICK,

WAKE COUNTY, N.C.

Plaintiffs,

v.

ORDER

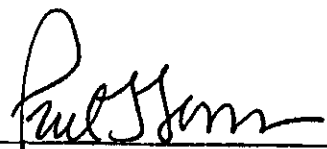
BEVERLY EAVES PERDUE, in her
official capacity as Governor of North
Carolina,

Defendant.

THIS MATTER coming to be heard, and being heard, by the undersigned Judge Presiding over the November 8, 2010 civil session of Wake County Superior Court on Defendant's Motion to Dismiss pursuant to Rules 12(b)(1), 12(b)(6), and 12(b)(7) of the North Carolina Rules of Civil Procedure, and the Court having considered the motion and other pleadings, and having read the briefs and heard arguments of counsel, is of the opinion that Defendant's Motion to Dismiss should be allowed.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Dismiss is hereby granted. This action shall be and is hereby dismissed with prejudice.

This the 29 day of November 2010.



HONORABLE PAUL G. GESSNER
SUPERIOR COURT JUDGE PRESIDING

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS 3520

McCRACKEN and AMICK,
INCORPORATED d/b/a THE NEW
VEMCO MUSIC CO. and RALPH
AMICK,

Plaintiffs,

v.

BEVERLY EAVES PERDUE, in her
official capacity as Governor of
North Carolina,

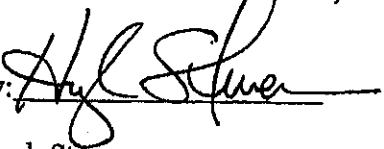
Defendant.

NOTICE OF APPEAL

The plaintiffs, through their undersigned counsel of record and pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, hereby give notice of appeal from the judgment entered in this cause on December 2, 2010 by the Honorable Paul G. Gessner.

This the 3d day of January, 2011.

STEVENS MARTIN VAUGHN & TADYCH, PLLC

By: 

Hugh Stevens
N.C. State Bar No. 4158
hugh@smvt.com
Michael J. Tadych
N.C. State Bar No. 24556
Attorneys for Plaintiffs
1101 Haynes Street, Suite 100
Raleigh, NC 27604
919.582.2300

APPELLANTS' PROPOSED ISSUES ON APPEAL

1. Did the trial court err in dismissing plaintiffs' cause of action on the grounds that:
 - a. Plaintiffs lack standing to bring this action;
 - b. Any claims purporting to challenge the constitutionality of N.C. Gen. Stat. § 147-12 are time-barred based on the expiration of the applicable statute of limitations and the doctrine of laches;
 - c. Any claims seeking to challenge potential future amendments to the Tribal-State Compact are barred by the doctrine of ripeness; and
 - d. The plaintiffs failed to name as a party defendant the Eastern Band of Cherokees, which is a necessary party to this action.

IDENTIFICATION OF COUNSEL

For the Appellants: Hugh Stevens
Michael J. Tadych
Stevens Martin Vaughn & Tadych, PLLC
The Historic Pilot Mill
1101 Haynes Street, Suite 100
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919.582.2300
866.593.7695 (facsimile)

For Appellee: Mark A. Davis
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602
919.716-6929
919-716-6763 (facsimile)

STIPULATION OF SERVICE AND SETTLEMENT OF RECORD

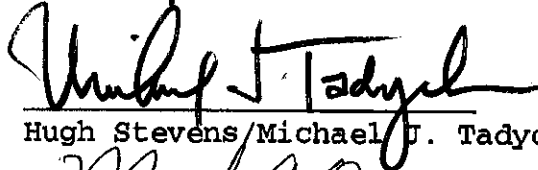
Counsel for the Appellant and Appellee stipulate as follows:

1. The Proposed Record on Appeal was timely served on counsel for the Appellee. The certificate showing service of the proposed record is omitted from the settled record.

2. The foregoing 62 pages constitute the record on appeal.

This the 11th day of February, 2011.

For the Appellants:



Hugh Stevens/Michael J. Tadych

For the Appellees:



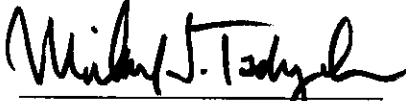
Mark A. Davis

CERTIFICATE OF HAND DELIVERY

The undersigned hereby certifies that the foregoing **Record on Appeal** was served on counsel for the Appellee by hand delivering a true copy thereof to:

Mark A. Davis
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602

This the 11th day of February, 2011.



Michael J. Tadych