

OMAHA TRIBAL CODE (2013)

TITLE 29. GAMING

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TITLE 29. GAMING

Source: Omaha Tribal Council Ordinance No. 13-49 (3/21/13), approved by NIGC 7/23/13.

SECTION 29-1-1. Title.

This Code shall be cited as the “Omaha Tribal Gaming Code.”

SECTION 29-1-2. Authority.

The Code is promulgated pursuant to Article IV, Sections 1(j) of the Constitution, the Bylaws, and the inherent powers of the Omaha Tribe as a federally recognized sovereign Indian tribe.

SECTION 29-1-3. Findings.

The Tribal Council of the Tribe finds as follows:

(a) The Indian gaming industry is vitally important to the economy of the Tribe and the health and general welfare of its Citizens as well as the economy of the area surrounding the Tribe's territories and the inhabitants of such surrounding areas.

(b) The continued growth and success of Indian gaming is dependent upon public confidence and trust that Indian gaming is conducted honestly and competitively and that Indian gaming is free from criminal and corrupt elements.

(c) Public confidence and trust can only be maintained by strict and fair regulation of all persons, practices and activities related to the operation of Indian gaming.

(d) It is essential to the health, safety and general welfare of the Citizens of the Tribe that standards and regulations to govern the conduct of gaming activities be established and promulgated.

(e) Gaming is a socially acceptable method of recreation and a valid and efficient means for enhancing governmental revenue, provided that it is properly, fairly and fully regulated.

(f) The Tribe has the sole proprietary interest in and responsibility for the conduct of gaming activities on the Indian Lands of the Omaha Tribe.

(g) The Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 et seq., recognizes the authority of the Tribe to regulate gaming on the Indian Lands of the Omaha Tribe.

SECTION 29-1-4. Purposes.

This Code was promulgated in order to regulate the conduct of gaming on Indian Lands and to implement the following purposes:

(a) To authorize the conduct of Class I, II, and III Gaming activities pursuant to the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 et seq., as a means of promoting tribal economic development;

(b) To enhance employment opportunities for Tribal Citizens as well as residents of the Tribe's territories and the surrounding area;

(c) To strengthen the economy of the Tribe and that of the surrounding areas;

(d) To generate revenue for use in improving the economic status, health, education and general welfare of Tribal Citizens and create economic opportunities for Tribal Citizens;

(e) To assure that the Tribe is the primary beneficiary of gaming and that a minimum of 20% of the profits received by the Tribe from the operation of gaming activities are used to promote economic development, education, governmental services, health and the general welfare of the Tribe and its Citizens;

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(f) To develop and implement an effective regulatory scheme for the conduct of gaming on Indian Lands and to assure that each Gaming Facility is constructed, maintained, and operated in a manner that adequately protects the environment and the public health and safety;

(g) To provide a basis for the operation and regulation of gaming by the Tribe as a means of promoting Tribal economic development, self-sufficiency and full employment of Tribal Citizens and a strong Tribal government;

(h) To assure that all gaming activities will be conducted under the exclusive ownership, control and responsibility of the Tribe and the Operator;

(i) To assure that the Tribe will receive at least 60% of the net revenues of all gaming activities conducted pursuant to this Code;

(j) To ensure that such gaming activities are carried out in conformity with the Indian Gaming Regulatory Act of 1099, 25 U.S.C. § 2701 et seq., and any Compact as may presently be in effect or be executed hereafter.

(k) To protect the health, welfare and safety of the public;

(l) To assure that the profits derived from the Tribe's gaming activities are accurately reported, are transferred to the rightful parties and are used for the purposes intended;

(m) To assure honesty and financial integrity of all gaming conducted pursuant to this Code and the Compact;

(n) To establish as a matter of law that an Omaha Tribal license to operate a gaming activity is a revocable privilege, not a right or property interest;

(o) To deter any criminality, or the potential for any criminality to occur, and to shield gaming from any involvement with organized crime or other corrupting influences; and

(p) To protect, preserve and enhance the economic and general welfare of the Omaha people and ensure that the Tribe regulates gaming in a manner that is commensurate with the interests of the Omaha people.

SECTION 29-1-5. Definitions.

(a) "Applicant" means any person or entity applying for a license pursuant to the provisions of this Code.

(b) "Blackbird Bend Corporation" means the wholly owned tribal entity established under the laws of the Omaha Tribe by Omaha Tribal Council Resolution No. 10-95 for the purpose of operating the Tribe's Gaming Facilities, also referred to herein as "Operator."

(c) "Chairman" means the Chairman of the Omaha Tribal Gaming Commission

(d) "Class I Gaming" means Class I Gaming as defined at 25 U.S.C. § 2703(6), and any regulations promulgated hereunder.

(e) "Class II Gaming" means Class II Gaming as defined at 25 U.S.C. § 2703(7)(A), and any regulations promulgated hereunder.

(f) "Class III Gaming" means Class III Gaming as defined at 25 U.S.C. § 2703(8), and any regulations promulgated hereunder.

(g) "Commission" means the Omaha Tribal Gaming Commission and all members thereof, including the Chairman.

(h) "Compact" means an effective Tribal-State Compact, including the Appendices to the Compact, both as amended from time to time, between the Omaha Tribe and the State of Iowa and/or State of Nebraska.

(i) "Gaming Code" and "Code" means Title 29 of the Omaha Tribal Code, as it may, from time to

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time, be amended or renumbered.

(j) "Gaming Facility" means each location or structure in which authorized gaming is licensed, promoted, performed, conducted, or operated pursuant to the IGRA, the Compact, and this Code.

(k) "Gaming Financier" means a person or entity providing financing to the gaming operation that are required to be licensed pursuant to this Code, provided, however, that any federally regulated or state-regulated bank, savings and loan, or trust, or other federally or state-regulated lending institution; any agency of the federal, state, tribal or local government; or any other person or entity, including but not limited to an institutional investor who alone, or in conjunction with others, lends money through publically or commercially traded bonds or other commercially traded instruments, including but not limited to the holders of such bonds or instruments or their assignees or transferees, or which bonds or commercially traded instruments are underwritten by any entity whose shares are publically traded or which underwriter, at the time of underwriting, has assets in excess of one hundred million dollars (\$100,000,000.00) shall be exempt from the licensing and background investigation requirements pursuant to this Code.

(l) "Gaming Goods" means any items or supplies used for or in conjunction with games and gaming and the security for such games and shall include, but not be limited to, the games themselves (including gaming machines, gaming tables, cards, chips, dice, etc.); machines that count, weigh, or otherwise are used to process currency, chips, gaming tickets, gift cards, and other items of monetary value on the gaming floor or in backroom operations including currency and ticket counters, ticket redemption units, ticket and currency kiosks, and bill breakers; software and computer hardware that controls such games and/or that monitors or accounts for money and tickets for one or more games or that tracks players; security equipment such as surveillance cameras, recording equipment, key security systems, etc; and the parts and supplies for such games, machines, items, and systems.

(m) "Gaming Vendor" means any person or entity that (1) manufactures, sells, or supplies Gaming Goods, including gaming equipment, or services for the gaming activities and operations at the Tribe's Gaming Facilities, including accounting services, but excluding certified public accountants or attorneys and their firms to the extent that they are providing services covered by their professional licenses; (2) provides any other goods and services related to the gaming operation; (3) provides development and/or construction services in relation to a Gaming Facility licensed or required to be licensed pursuant to this Code; or (4) is engaged by the Tribe under a Management Contract.

(n) "IGRA" means the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 *et seq.*

(o) "Indian Land" or "Indian Lands" means all lands that meet the definition of Indian lands as defined in 25 U.S.C. § 2703(4).

(p) "Key Employee" means a natural person who is employed in an executive capacity or is empowered by the Operator to make discretionary decisions or exercise significant influence over decisions which regulate casino operation and any other person designated by the Regulations, including a person who performs one or more of the following functions: bingo caller, counting room supervisor, chief of security, custodian of gaming supplies or cash, floor manager, pit boss, dealer, croupier, approver of credit or custodian of gambling devices including persons with access to cash and accounting records within such devices. This term shall also include any person whose total cash compensation is in excess of \$50,000 per year, the four most highly compensated persons in the gaming operation, and any other person designated by the Commission as a key employee.

(q) "Licensee" means any person or entity holding a valid and current license pursuant to the provisions of this Code.

(r) "Management Contract" means any contract, agreement or other document, including all collateral agreements, between the Omaha Tribe and a third-party contractor or between a Omaha Tribe contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

(s) "Management Contractor" means a natural person or entity that has entered into a Management

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Contractor with the Tribe or the Operator which has been approved pursuant to 25 U.S.C. § 2710(d)(9) and 2711.

(t) "NIGC Chairman" means the Chairman of the National Indian Gaming Commission.

(u) "Non-Gaming Vendor" means a provider of services or goods to a Gaming Facility that are not directly related to or used in connection with gaming activities or the handling, processing, and/or accounting of cash or cash equivalents from the gaming activities, but excluding goods and services provided by a publicly regulated utility company. Examples of such goods and services include, but are not limited to, providers of: uniforms or laundry services; food, beverages and goods; cleaning supplies and services; general purpose equipment or items such as light bulbs, vacuum cleaners, and decorations; entertainment services.

(v) "Net Revenue" means gross gaming revenues of a gaming operation less amounts paid out as, or paid for, prizes, and total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

(w) "Omaha Hiring Preference" means the standard to be applied in the final selection process when there are two candidates for the same position, one of whom is a Tribal Citizen, and one of whom is not, who are equally qualified for the position in terms of education, background, training, and experience in which case hiring preference shall be accorded to the qualified member of the Omaha Tribe.

(x) "Omaha Tribe" or "Tribe" means the Omaha Tribe of Nebraska, tribal law enforcement authorities and all governmental persons or entities acting under the authority of the Omaha Tribe.

(y) "Operator" means the Blackbird Bend Corporation.

(z) "Primary Management Official" means the person having management responsibility for a Management Contract; or any person who has authority to hire and fire employees, set up working policy for the gaming operation, supervise, direct, or operate Gaming Facilities; or the Chief Financial Officer or other person who has financial management responsibility; or any other person designated by the Tribe as a Primary Management Official.

(aa) "Principals" means with respect to Gaming Vendors and Gaming Financiers, its sole proprietor or any partner, trustee, beneficiary, or shareholder holding fifteen (15%) percent or more of its beneficial or controlling ownership, or any officer, director, primary management employee including its Chief Financial Officer or other person who has financial management responsibility as an employee or under contract, or key employee thereof; and with respect to Management Contractors, any person or entity having a direct financial interest in, or management responsibility for the Management Contract, including any officer of a corporation, any individual who serves on the board of directors of a corporation, any shareholder who directly or indirectly owns five (5%) percent or more of the issued and outstanding stock of the corporation, all general partners in a partnership, and all managers of a limited liability company.

(bb) "Regulations" means the Regulations promulgated by the Commission pursuant to this Code.

(cc) "Revoke" shall mean to permanently void and recall all rights and privileges to hold or obtain license.

(dd) "Secretary" means the Secretary of the Department of the Interior.

(ee) "State" means the state with which the Tribe has duly entered an effective Tribal-State Compact, including individuals, entities, political subdivisions (including counties), and agencies thereof.

(ff) "Suspend" means to cause a temporary interruption of all rights and privileges of a license.

(gg) "Tribal Chairman" means the duly elected Chairman of the Omaha Tribe.

(hh) "Tribal Citizen" or "Citizen" means a person who is an enrolled member of the Omaha Tribe.

(ii) "Tribal Court" or "Court" means the judicial body of the Tribe.

(jj) "Tribal Council" or "Council" means the Omaha Tribal Council.

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(kk) "Tribal Gaming Commission," "Gaming Commission" and "Commission" means the Omaha Tribal Gaming Commission established by the Tribe pursuant to this Code as required by the Compact.

(ll) "Tribe" means the Omaha Tribe of Nebraska, a federally recognized Indian tribe organized under a constitution and bylaws approved by the Secretary of the Interior on April 30, 1936, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. Sec. 984) (25 USC Sec. 476), as amended by the Act of June 15, 1935 (49 Stat. Sec. 378).

SECTION 29-1-6. Interpretation of Code.

The provisions of this Code, being necessary for the welfare of the Omaha Tribe and its inhabitants, shall be liberally construed to effect the purposes and objects thereof. Section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section hereof.

SECTION 29-1-7. Severability.

The provisions of this Code are severable and if any part or provision hereof shall be held void by a court of competent jurisdiction, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Code.

SECTION 29-1-8. Repeal of Inconsistent Legislation.

This Code revokes, supersedes, and replaces Title 28: Class II Gaming and Title 29: Class III Gaming, in their entirety. All other laws of the Omaha Tribe inconsistent with the provisions of this Code and existing as of the effective date of this Code are hereby repealed, including all inconsistent laws, ordinances, and resolutions. Repeal by this Code of any law, ordinance, or resolution shall not have the effect of reviving any prior law, ordinance, or resolution heretofore repealed or suspended by such repealed code.

SECTION 29-1-9. Codification.

This Code is hereby codified as Title 29 of the Omaha Tribal Code and may be recodified as necessary to the extent the Omaha Tribal Code of Laws is recodified.

SECTION 29-1-10. Effective Date of Code.

This Code shall become effective as a replacement for the laws governing Class II and Class III Gaming, as codified in Title 28: Class II Gaming and Title 29: Class III Gaming of the Omaha Tribal Code of Laws, and any amendments to Titles 28 and 29 enacted prior to the date of this Code, immediately upon its approval by the Chairman of the NIGC.

SECTION 29-1-11. Sole Proprietary Interest.

The Omaha Tribe shall have the sole proprietary interest and responsibility for the conduct of gaming activities conducted on the Indian Lands of the Omaha Tribe.

SECTION 29-1-12. Classes of Games Authorized.

(a) Classes I, II, and III Gaming are hereby authorized to be conducted upon Indian Lands of the Omaha Tribe, provided that Class III Gaming shall be permitted only if, and only to the extent, authorized by a duly executed Tribal-State Gaming Compact(s) and/or amendment(s) thereto approved by the Secretary of the Department of the Interior. No Class III Gaming activities may be conducted on Indian Lands of the Omaha Tribe in the absence of a valid, approved Compact or in contravention of such Compact.

SECTION 29-1-13. Protection of the Environment and Public Health and Safety.

The Omaha Tribe's Gaming Facilities shall be constructed, maintained, and operated in a manner that adequately protects the environment and the public health and safety.

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SECTION 29-1-14. Gaming Facility License Required.

The Omaha Tribe shall issue a separate license to each place, facility, or location where gaming is conducted under this Code. Every Gaming Facility shall display in a prominent place a current and valid license for that location.

SECTION 29-1-15. Regulation of Gaming.

All gaming activities of the Omaha Tribe and all related activities undertaken in connection with such gaming activities shall be regulated by the Omaha Tribal Gaming Commission, an independent regulatory agency of the Omaha Tribe.

SECTION 29-1-16. Use of Gaming Revenue.

(a) Net Revenues. Net revenues from Class II and Class III Gaming shall be used only for the following purposes:

- (1) To fund the Tribe's government operations and programs;
- (2) To provide for the general welfare of the Tribe and its members;
- (3) To promote the Tribe's economic development activities;
- (4) To donate to charitable organizations; and
- (5) To help fund operations of local government agencies.

(b) Restrictions. The Tribe's gaming revenues may be expended for the purposes specified in subsection (a) of this Section only if administered by a governmental department, division, component, agency, and/or other governmental instrumentality of the Omaha Tribe as authorized by the Tribe's law(s) and/or as appropriated by the Tribal Council. The Tribe's gaming revenues shall not be subject to distribution to individual members on a per capita basis, provided that, nothing in this section shall be construed to prevent the Tribe from disbursing grants, scholarships, or providing other benefits or services administered by the Tribe to qualified members; provided further, that nothing in this Code shall be construed to limit the authority of the Omaha Tribe or any governmental instrumentality of the Omaha Tribe to make any purchase of any kind or to save, deposit, or invest any portion of the Tribe's gaming revenues in any authorized savings and/or investment fund, account, or program.

SECTION 29-1-17. Audits.

An independent financial audit of gaming operations and such reviews and internal audit procedures as may otherwise be specified in applicable federal laws or regulations governing casino audit requirements shall be conducted annual. The resulting audit reports shall be submitted to the National Indian Gaming Commission in accordance with applicable regulations. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the annual independent audit. In addition to an annual independent financial audit, facilities licensees shall be subject to such other audits and procedures as may be required by federal law and regulations.

SECTION 29-1-18. Management Contracts.

(a) General Prohibition. No management contract may be executed by or on behalf of the Omaha Tribe with any third-party unless authorized by a duly adopted resolution of the Tribal Council and in full compliance with all applicable provisions of IGRA, particularly, 25 U.S.C. Section 2711 and regulations issued pursuant thereto.

(b) Terms. A Management Contract must:

- (1) Prohibit the Management Contractor from subcontracting, assigning, or transferring its rights and duties or any ownership interest under the contract;

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- (2) Guarantee the Tribe a minimum monthly distribution of not less than 60% of the monthly net income of the gaming and gaming-related activities;
- (3) Not exceed a term of five years, to include all renewal terms;
- (4) Conform with all applicable statutory and regulatory requirements.

(c) **Background Investigation.** A background investigation must be completed by the Commission or its designee for each person or entity having a direct financial interest in, or management responsibility for a Management Contract and, in the case of a corporation, for each individual who serves on the board of directors, each officer, and each shareholder who directly or indirectly owns five percent or more of the issued and outstanding stock of the corporation. In the case of a management company, background investigations shall be conducted for direct or indirect owners of 5% or more of the equity interests in the management company. In the case of a partnership (general or limited), background investigations shall be conducted on all general partners, regardless of size of equity ownership. In the case of a limited liability company, background investigations shall be conducted on all managers, regardless of size or equity ownership.

SECTION 29-1-19. Compliance with Applicable Federal Laws.

In addition to its authority to enforce compliance with this Code and regulations issued hereunder, the Commission is hereby delegated the authority to monitor, enforce, and sanction violations of all federal laws and regulations applicable to the Tribe's gaming activities including, without limitation, the pertinent provisions of Title 25 of the United States Code and the Code of Federal Regulations, Title 26 of the United States Code and the Code of Federal Regulations, and Title 31 of the U.S. Code and Code of Federal Regulations, among others.

SECTION 29-1-20. Compliance with Compact.

The Commission is hereby delegated the authority to monitor, enforce, and sanction violations of the terms and conditions of the Tribe's gaming Compact(s).

SECTION 29-1-21. Consent to Jurisdiction.

(a) **Consent.** Any person who:

- (1) Applies for and/or is granted a license under this Code;
- (2) Applies for employment in any Gaming Facility licensed and/or regulated under this Code;
- (3) Enters into any contract, engagement, or agreement related to gaming regulated under this Code;
- (4) Participates in any gaming activity authorized by this Code or enters onto the premises of any Gaming Facility licensed under this Code –

is subject to the civil jurisdiction of the Tribe, Commission, and the Omaha Tribal Court and a person's performance of any of these acts shall constitute consent to the Tribe's exercise of such jurisdiction.

(b) **Limitation.** Nothing in this Section shall limit the jurisdiction of the Tribe, the Commission, or the Omaha Tribal Court under any circumstances not explicitly contemplated in this Code, nor shall this Code be construed to waive, in whole or in part, the Tribe's or Operator's sovereign immunity from unconsented suit.

SECTION 29-1-22. Noncompliance.

Failure to comply with any of the requirements of this Code, or the regulations promulgated hereunder shall constitute a violation of this Code.

SECTION 29-1-23. Designation of Agent for Service of Process.

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The Chairman of the Commission is hereby designated as agent for service of any official determination, order, or notice of violation of this Code or of IGRA. The Chairman shall promptly report and provide copies of any such service to the Chairman of the Tribal Council and Operator, as appropriate.

SECTION 29-1-24. Tribal Gaming Commission.

(a) Establishment. The Omaha Tribal Gaming Commission, an independent regulatory agency of the Omaha Tribe, is hereby established. The purpose of the Commission is to regulate the manner in which Gaming is conducted. In order to provide for comprehensive and effective regulation of the Tribe's gaming activities, the Commission is authorized to develop and implement regulations regarding gaming activities; take necessary steps to ensure that the Gaming Facilities comply with the Indian Gaming Regulatory Act, the Code, and the Compact(s); to enforce all applicable tribal, state, and federal laws; and to shield the Tribe's gaming operation from corruption and criminal infiltration.

(b) Members; Terms; Appointments. Commission membership shall be made up of three (3) members, consisting of a Chairman, a Secretary and a Treasurer. The three Commissioners shall serve three year terms under the direct authority of the Tribal Council. Each Commissioner may continue to serve beyond the expiration of his or her term until the successor to such Commissioner has been appointed and confirmed. The Tribal Council shall appoint and confirm Commissioners. In selecting candidates for appointment to the Commission, the Tribal Council shall accord preference to members of the Omaha Tribe possessing the requisite credentials established in this Code in accordance with the Omaha Hiring Preference standard. All openings on the Commission shall be publicly advertised. Commissioners, as a prerequisite to appointment, shall be at least 25 years of age and may not hold any elected office of the Tribe.

(c) Commissioners; Compensation. The Chairman, the Secretary, and the Treasurer, respectively, shall be compensated in accordance with the approved Commission operating budget then in effect, provided that once established compensation shall not be reduced during a Commissioner's term. The employment status and rate of compensation paid to those members of the Commission serving on the date of enactment of this Ordinance shall continue unchanged unless and until modified in the Commission budget for the succeeding fiscal year following enactment of this Ordinance.

(d) Commissions; Business Expenses; Reimbursement. Members of the Commission shall be reimbursed from Commission funds for all necessary and reasonable travel and other reasonably necessary expenses which may be incurred by them from time to time, in accordance with tribal policies and procedures as may be in effect from time to time for the Tribe generally. Extraordinary expenses and any travel outside of Iowa or Nebraska must have the prior written approval of the Tribal Council in order to be reimbursable.

(e) Qualifications of Commissioners. To be eligible for appointment as a Commissioner, a nominee shall:

- (1) Never have been convicted of any gaming-related offense;
- (2) Have no financial interest in, or management responsibility for, any gaming activity;
- (3) Not have been convicted of any felony offense by any court of law within a period of ten (10) years preceding appointment;
- (4) Never have been convicted of any offense involving untruthfulness or dishonesty, including but not limited to, fraud, theft, bribery, gaming offense, or embezzlement, regardless of the degree of the offense, by any court of law; and
- (5) Have no immediate family members who have a financial interest in the gaming activities or equipment specifically regulated by the Commission other than a financial interest enjoyed equally by all Tribal Citizens.

(f) Disqualification. An unfavorable finding with regard to any of the items set forth in subsection (e) above shall disqualify a candidate for appointment to the Commission.

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(g) Education. Each Commissioner must have a four year college degree or comparable work experience, or a combination of both, and based on a combination of experience and education be considered capable of performing the duties of the position. The Tribal Council will also consider the candidate's combination of experience and education related to gaming, business or other management, law enforcement, criminal investigation, and/or accounting and auditing, in determining whether a candidate is capable of performing the duties of a Commissioner pursuant to this Code.

(h) Commissioners; Background Investigation; Failure To Qualify; Removal. Prior to appointing a permanent Commissioner, the Tribe shall conduct or cause to be conducted a background investigation on the proposed Commissioner, who shall be required to satisfy the requirements for background investigations set forth in Section 29-1-32 of this Code.

- (1) Review of Background Investigation. The Tribal Council shall review the background investigation(s) for each candidate, which shall be conducted by the Tribal police or other designee of the Tribal Council.
 - (A) The Tribal Council may not appoint a permanent Commissioner if the individual does not meet the criteria in Sections 29-1-31(b) and 29-1-32(g) of this Code.
 - (B) The Tribe may appoint a Commissioner pro tem pending the satisfactory completion of the background investigations as determined by the Tribal Council.
 - (C) Should the background investigation on any proposed appointee be determined negative by the Tribal Council, then that appointee shall be disqualified for appointment to the Commission and the Tribal Council shall recommence the selection process.
- (2) Failure to Qualify. The failure of a Commissioner pro tem to qualify as a permanent Commissioner or to maintain such qualification under this Code, the Compact or other applicable law shall cause the Tribal Council to appoint a successor within 10 business days after notice thereof and, in the event the Tribal Council fails to make such appointment in such 10-day period, the General Counsel to the Tribe may act as Commissioner pro tem until the Council appoints a successor.
- (3) Removal.
 - (A) A Commissioner shall be removed by the Tribal Council for any one or more of the following reasons:
 - (i) Conviction of a felony, any gaming related offense (misdemeanor, felony and other certain crimes), or any crime of moral turpitude;
 - (ii) Noncompliance with this Code, the Regulations or the Compact, or any other applicable gaming laws and regulations;
 - (iii) Solicitation or acceptance of bribes;
 - (iv) Failure to carry out his or her responsibilities;
 - (v) Conviction in any court of competent jurisdiction of any offense of any degree involving untruthfulness or dishonesty; or
 - (vi) Neglect of duty or misconduct reflecting adversely upon the integrity or reputation of the Omaha Tribe.
 - (B) A Commissioner may be removed from office prior to the end of any term upon a majority vote of the Tribal Council for malfeasance in office, neglect of duty, or excessive absence from regularly scheduled Commission meetings.
- (4) Removal Procedure. A petition for removal hereunder may be filed with the Tribal Council by the Tribal Chairman or by a majority vote of the Tribal Council.
 - (A) A Commissioner accused of any of the foregoing causes shall be given a copy of the petition charging him or her at least fourteen days in advance of the date set for the

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hearing by the Tribal Council. The Commissioner shall be afforded the right to respond to the charges and present witnesses and other evidence in his or her defense at a hearing convened by the Tribal Council.

- (B) The petition shall state the cause or causes for removal with sufficient particularity to put the Commissioner on notice of the nature of the charges against him or her.
- (C) The Commissioner so accused shall have the right to be represented by an attorney at the hearing, provided that the Commissioner shall be responsible for paying his or her own attorneys fees and other expenses in defending against the petition.
- (D) Removal of the Commissioner shall require a majority vote of the Tribal Council.
- (E) The decision of the Tribal Council shall be final and binding, and shall not be subject to judicial review.

(5) Suspension. A Commissioner may be suspended, with or without pay, by the Tribal Council for any reason that could subject the Commissioner to removal as provided above.

- (A) If a Commissioner is so suspended, the Tribal Council shall appoint a qualified individual to serve as Acting Commissioner during the suspension.
- (B) An Acting Commissioner shall have all powers of the position of Commissioner.
- (C) In the event the Tribal Council fails or is unable to appoint an Acting Commissioner within 10 days of the suspension, the Attorney General of or General Counsel to the Tribe, as applicable, may serve as Commissioner pro tem until the Council appoints an Acting Commissioner.

(6) Continuing Duty to Report. Commissioners shall serve under a continuing duty to apprise the Tribal Council of any charge, arrest, or conviction that occurs during his or her term of office.

(i) Prohibitions; Conflicts of Interest.

(1) Commissioners shall refrain at all times during his or her term of office from participating in any gaming activities at a Gaming Facility. A Commissioner may not hold any other tribal position, including any position with a tribally owned business enterprise, except volunteer activities or temporary duties authorized by the Tribal Council to be performed without increase in compensation unless specifically authorized by resolution of the Tribal Council and only upon a finding that the holding of the position does not create a conflict of interest between the performance of duties in relation to either position.

(2) Conflicts of Interest.

(A) Members of the Commission and its officers, employees, and agents, including its attorneys, and their immediate family members and relatives who reside in the same household, may not have any interest, whether financial or proprietary, direct or indirect, in any gaming activity conducted under this Code, except as a member of the Tribe sharing in the benefits and revenues enjoyed equally by all Tribal Citizens.

(B) Members of the Commission and its officers, employees, and agents shall refrain at all times during his or her term of office, employment or service from participating in any gaming activities or related promotional activities in any Gaming Facility under the Commission's jurisdiction and shall not adjudicate any matter in which a party to the dispute is a member of the Commissioner's immediate family or is an entity in which the Commissioner has a pecuniary interest.

(C) In the event of a conflict of interest, the conflicted member or employee of the Commission shall recuse him or herself from the matter. Should the need for recusal arise, the Commissioner shall so notify the Tribal Chairman in order that an alternate may be selected to carry out the duties of the Commissioner in relation to the matter, if necessary.

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- (D) No member, officer, agent or employee of the Commission shall be employed as a Primary Management Official or Key Employee. This prohibition applies to the Commission and all of its employees.
- (E) For purposes of this section immediate family shall include: spouse, child, sibling, parent, grandparent, grandchild, and such other person or persons with whom the Commissioner may reside.
- (F) No Commissioner may be engaged in a business or employment outside the Omaha Tribe which has commerce with any facility Licensee under this Code, or holds a financial or proprietary interest, whether direct or indirect, in any business which has commerce with any facility Licensee under this Code.

(j) Jurisdiction, Powers of Commission. The Commission shall have full, complete and perfect jurisdiction over all gaming matters arising under this Code, any Compact, and federal laws applicable to gaming activities, and shall have independent authority to regulate and supervise all gaming activities and to administer the provisions of this Code. However, to the extent that such decisions do not directly invoke the specific authorities of the Commission as specified hereunder, the Commission shall not have the power to direct, obstruct, or otherwise interfere with the business decisions of a Primary Management Official or Operator involving funds from the Operator's approved budget. The Commission shall have and perform duties and powers as prescribed by this Code which include the following duties and powers, which shall be exercised consistently with the IGRA, the Compact, this Code and the Regulations:

- (1) To draft, propose and promulgate Regulations with regard to engaging in, licensing and regulating all aspects of gaming as may be necessary or desirable in the judgment of the Commission for the effective, fair and efficient regulation of the Tribe's gaming operations. Such Regulations shall have the force of law and be consistent with the purposes of this Code, the IGRA and the Compact(s) under which all gaming activities shall be conducted and all Gaming Facilities maintained;
- (2) To resolve patron disputes, including disputes over prizes;
- (3) To classify and license Class I, II and III Gaming activities consistent with the IGRA;
- (4) To issue and serve subpoenas for the production of documents, things or persons and to administer oaths or affirmations and to require testimony under oath or affirmation before the Commission in the course of any investigation or hearing conducted under this Code or the Regulations, for which process and notices shall be served in the manner provided by the Tribal Code;
- (5) To propound written interrogatories and to appoint hearing examiners to whom may be delegated the power and authority to administer oaths or affirmations, issue subpoenas, propound written interrogatories and require testimony under oath;
- (6) To inspect, monitor and examine all premises where gaming is conducted and Gaming Goods are utilized, stored, sold or distributed;
- (7) To enter, inspect, observe or investigate at any time, with or without warrants, notice or warnings, the offices, facilities or other places of business of a Primary Management Official, wherever the same may be located, in order to determine compliance with the Compact, this Code, the Regulations and other applicable laws and regulations;
- (8) To investigate alleged violations of the Compact, this Code, the Regulations and other applicable laws and regulations and to take appropriate enforcement action or refer any matter to a criminal law enforcement agency for investigation and possible prosecution.
- (9) To determine, assess and collect civil and administrative fines and Revoke or Suspend licenses for conduct violating the terms of the Compact, this Code, the Regulations or other applicable laws and regulations;
- (10) To investigate the activities of any person, firm or other business entity relating to the conduct

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of any gaming activity;

- (11) To compel, by order of the Commission, the attendance of witnesses or the production of any books, papers, correspondences, memoranda, documents, agreements or other records which the Commission, in the exercise of its discretion, deems relevant or material to any investigation;
- (12) To provide by Regulations for the surveillance and videotaping of all authorized gaming activities;
- (13) To provide by Regulations for requirements necessary for adequate security at all facilities in which authorized gaming is conducted;
- (14) To temporarily impound gaming equipment for investigation or analysis; and shut down gaming equipment failing to conform to the standards required under this Code, the Regulations, the Compact or the IGRA or other applicable laws and regulations;
- (15) To inspect, examine and photocopy all papers, books and records of Applicants and Licensees and require verification of income and expense of gaming activities and all activities conducted under or in violation of this Code, the Compact or the Regulations;
- (16) To collect all license, investigation and registration fees imposed by this Code and the Regulations;
- (17) To conduct all hearings pertaining to civil violations of this Code, the Regulations, the IGRA or the Compact;
- (18) To be present through its members and agents at all times during the operation of any gaming Facility for the purpose of certifying the revenue thereof and conducting such other investigations into the conduct of gaming, and the maintenance of Gaming Goods, as from time to time the Commission may deem necessary and proper;
- (19) To review and rule upon any complaint by a gaming Primary Management Official regarding any investigative procedures of the Commission which are unnecessarily disruptive of casino operations. The disruption of a gaming operation shall be proved by preponderance of the evidence and the complainant shall bear the burden of establishing that the procedures had no reasonable law enforcement or regulatory purpose and the procedures were so disruptive and without cause as to unreasonably inhibit operations of the Gaming Facility;
- (20) To review and approve operational procedures prepared by Primary Management Officials which govern the specific operation of Gaming Facilities, including security, accounting, game rules, cash control, game procedures and other matters, all of which, following approval, will have the force of law pursuant to this Code;
- (21) To develop licensing procedures and issue permanent, probationary, conditional, and temporary licenses and to oversee, regulate and enforce compliance by all Licensees;
- (22) To conduct or cause to be conducted background investigations and a review of the prior activities, reputation, habits and associations, as prescribed by law, of all Key Employees and Primary Management Officials, Principals of Gaming Vendors and Gaming Financiers and Management Contractors, and such other persons as the Commission shall determine to be necessary in the exercise of its discretion;
- (23) To forward notification of results reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission prior to issuing a license, pursuant to the IGRA and the NIGC's regulations, and to notify the NIGC if, after completing the background investigations on the Key Employee or Primary Management Official, the Tribe does not license the individual Applicant;
- (24) To ensure that all licensed gaming Primary Management Officials are properly accounting for all revenues and expenses (provided that the Commission shall not interfere with a Primary

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Management Official's or Operator's decisions respecting implementation of a Operator budget approved by the Tribe) and that these revenues and expenses are properly assigned and disbursed in a manner consistent with Tribal and applicable federal law;

- (25) To review the rules of any gaming promotion that require game play as a condition of eligibility;
- (26) To assist other law enforcement agencies in the investigation, enforcement and prosecution of gaming violations of this Code, the Regulations and federal law and regulations, and to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts;
- (27) To adopt an operating budget for the Commission, which shall set forth monthly expenditures, and submit such budget annually to the Tribal Council for approval;
- (28) To report to the Council and/or Tribal Citizens;
- (29) To appoint, supervise and terminate staff as necessary, and to delegate them authority to act, subject to the limits of the Commission's approved budget. All costs arising out of such necessary staffing will be paid out of Commission funds and the general revenues of the Tribe, subject to approval of the Council. All costs for independent audits, investigations and other independent consultants may be paid out of the general revenues of the Tribe, subject to the approval of the Council, provided these services are competitively selected in advance, and further provided that this competitive selection requirement shall not be applicable when the Commission determines that an emergency exists;
- (30) To hear and decide promptly and in reasonable order all license application requests and the issues affecting the granting, suspension, revocation or renewal thereof consistent with due process of law;
- (31) To identify occupations within gaming operations which require licensing and to adopt by Regulation additional standards for licensing such occupations, including designating additional positions as key employees;
- (32) To deny any license application for cause and to revoke, cancel, condition, or suspend for cause any license issued by it;
- (33) To issue and cause to be served upon the holder of a license issued by it orders to cease and desist, compel, cure, or such other orders as may be appropriate under the circumstances;
- (34) To impose or levy on a Licensee, for cause, reasonable civil fines pursuant to a written schedule to be established by the Commission, subject to approval of the Tribal Council. For purposes of this subsection, "cause" shall include instances in which the Licensee intentionally violated the provisions, requirements, conditions, limitations or duties imposed by the Compact, this Code or any Regulations;
- (35) To conduct or cause to be conducted audits and compliance reviews;
- (36) To ensure and verify that an independent financial audit of the gaming operation(s) is performed annually, which encompasses a sampling of contracts for services and supplies totaling over \$25,000 in a year as well as agreed upon procedures to measure compliance with the operation(s)'s internal control procedures. Such independent audits must be submitted to the NIGC pursuant to the IGRA;
- (37) To compute, determine, assess and collect accurate amounts required to be paid to the Commission as fees, which may be used to defray the costs incurred by the Commission in the regulation of gaming;
- (38) To develop and administer forms as are necessary to carry out the provisions of this Code and the Regulations; and
- (39) To possess such other powers and authority as may be necessary to fulfill its obligations under this Code, the Regulations, applicable federal laws and regulations, and any Gaming

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Compact.

(k) Sovereign Immunity. The Commission is an instrumentality of the Tribe and is created by the sovereign powers of the Tribe and, as such, shares the same privileges and immunities of the Tribe, including the sovereign immunity of the Tribe.

- (1) The Commissioners, except when being removed from office under Sections 29-1-24(h), shall enjoy the sovereign immunity of the Tribe, provided that the Commissioner(s) are acting lawfully and within the scope of their authority. Except as specifically provided herein, no waiver of sovereign immunity for acts of the Commission or its members is made or implied hereby in any manner nor may any party under any circumstances be awarded monetary damages from the Commission.
- (2) However, persons aggrieved by the decisions of the Commission may appeal such decisions to the Tribal Court, as provided in Section 29-1-44 hereof, and such appeal shall constitute the sole and exclusive method of review.

(l) Reports and Recommendations Concerning Gaming Regulation. The Commission shall carry on a continuous study of gaming issues, including the operation and administration of gaming laws which may be in effect in other jurisdictions, the literature on gaming which may from time to time become available, the federal laws which may affect the operation of gaming and the reaction of Licensees, Primary Management Officials and Tribal Citizens to existing and potential features of gaming under this Code.

- (1) The Commission shall be responsible for ascertaining any defects in this Code or in the Regulations issued hereunder, for formulating recommendations for changes in this Code to prevent abuses thereof, for guarding against the use of this Code and the Regulations as a cloak for the carrying on of illegal gambling or other criminal activities, and for insuring that this Code and the Regulations shall be in such form and be so administered as to serve the true and just purposes of this Code.
- (2) The Commission shall make an annual report to the Tribal Council, on or before February 1 of each year, of all revenues, expenses and disbursements, and shall include therein such recommendations for changes in this Code as the Commission deems necessary or desirable.
- (3) The Commission shall report immediately to the Tribal Council any matters which, in the Commission's judgment, require changes in the law of the Tribe in order to prevent abuses and evasions of the Compact, this Code or the Regulations or to conform with changes in applicable law.

SECTION 29-1-25. Chairman of the Gaming Commission.

(a) Powers. The Chairman is responsible on a full-time basis for the conduct of the Commission's administrative matters. The Chairman and his designees shall have the following powers:

- (1) To hire, supervise, direct the actions of all employees of the Commission and delegate them authority to act;
- (2) To employ or contract for legal and other professional services by providers of the Chairman's choosing;
- (3) To supervise the day-to-day operations of the Commission;
- (4) To report to the Commission concerning the operations thereof;
- (5) To supervise audits and investigations; and
- (6) To prepare reports and recommendations to the Commission concerning Applicants and Licensees.

(b) Limitations. Except for those powers specifically enumerated herein as exclusive to the Chairman, all other powers of the Commission shall be carried out by the Commission as a body.

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SECTION 29-1-26. Omaha Tribal Gaming Commission Regulations.

(a) General Authority. The Commission shall draft and promulgate Regulations for the orderly transaction and conduct of its business and such other substantive Regulations as may be proper and that concern the following: the application for, issuance of, Revocation and Suspension of gaming licenses, the conduct of Licensees, game rules and operation of gaming activities, technical standards for Class II and Class III Gaming equipment, Gaming Goods, security requirements, cash control standards and accounting procedures and any other subject the Commission determines necessary or desirable to carry out the purposes of this Code. The Commission shall also promulgate Regulations necessary to resolve complaints and disputes which may be received from the public.

(b) Regulations; Specific Provisions. The Commission may, without limitation on the powers conferred in the preceding section, include within its Regulations the following specific provisions in accordance with the provisions of this Code:

- (1) The methods and forms of application which any Applicant shall follow and complete prior to consideration of his or her application by the Commission;
- (2) The manner and procedure of all hearings conducted by the Commission or any hearing examiner, including special rules of evidence applicable thereto and notices thereof;
- (3) The manner and method of collection of administrative fines, assessments, fees and penalties;
- (4) The rules of authorized games, the odds, and the devices permitted, and the method of operation of such games and devices;
- (5) The grounds and procedures for the Revocation or Suspension of licenses;
- (6) The procedures for approving the forms and methods of management controls, including employee and supervisory tables of organization and responsibility, rotation schedules and minimum security standards, security personnel structure, alarm and other electrical, auditory or visual security measures;
- (7) The minimum procedures for the exercise of effective control over the internal fiscal affairs of a Primary Management Official, including provisions for the safeguarding of assets and revenues, the recording of cash and evidence of indebtedness, and the maintenance of records and reports of transactions, operations and events, including all such reports to the Commission;
- (8) The procedures for approval of accounting methods, procedures, forms and accounting classifications and such other operating procedures as may be necessary to assure consistency, comparability and effective disclosure of all financial information, including calculations of percentages of profit by games, tables and gaming devices; and
- (9) The required periodic financial reports and the form thereof, which shall include an annual financial audit prepared by a certified public accountant attesting to the financial condition of a gaming enterprise and disclosing whether the accounts, records and control procedures examined are maintained by the Licensee as required by the Compact, this Code and the Regulations.

(c) Notice and Comment. In carrying out its rulemaking functions, the Commission shall notify and consult meaningfully with the operator and primary management officials prior to the adoption of a final rule, regulation, schedule, form, procedure, or other document containing requirements intended to be enforceable by the Commission. The Commission shall provide the Operator the opportunity to comment on the proposal and shall full give consideration to such comments in the rulemaking process. Copies of all rules, regulations, procedures, schedules, forms, or other documents shall be made available to the Tribal Council and operator without cost or demand and to any person or entity subject to the authority of the Commission upon request.

SECTION 29-1-27. Gaming Commission Meetings.

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(a) Regular and Special Meetings. The Commission may hold regular and special meetings at such times and places as it may deem convenient, but at least one regular meeting shall be held quarterly. Meetings may be held by telephonic conference call. Special meetings may be called by any member of the Commission.

(b) Quorum. A majority of the appointed members constitutes a quorum of the Commission.

(c) Open Meetings. All actions and proceedings of the Commission shall be conducted during meetings open to the public except actions and proceedings which the Commission, by a majority vote, at an open meeting, determines best conducted during an executive session closed to the public for the reasons set forth in subsection (d) hereof.

(d) Purposes for Executive or Closed Meetings. The Commission may hold executive sessions or closed meetings for any of the following purposes:

- (1) Considering applications for licensing when discussing the background investigations, financial information or personal information of Applicants;
- (2) Meeting with the gaming officials of other Indian Tribes or other jurisdictions, or meetings with tribal law enforcement officials, the tribal prosecutor, the United States Attorney General, the Federal Bureau of Investigation, the Office of the Inspector General, the United States Attorney and other law enforcement officials relating to possible criminal violations;
- (3) Consulting with the employees and agents of the Commission concerning possible civil or criminal violations of this Code, the Regulations, the IGRA or the Compact;
- (4) Deliberating to reach a decision after hearing evidence in a contested case;
- (5) Discussing business strategies, marketing or pricing strategies of a Licensee or an Applicant for a license, if the Commission determines public discussion may be harmful to the competitive position of the Licensee or Applicant for license or discussions with a Licensee or an Applicant for a license for the purposes of overseeing gaming contracts;
- (6) Meeting with attorneys and General Counsel to the Tribe and/or the Operator; and
- (7) Ruling on whether a document and/or information contained therein used during a hearing should be made part of the public record or designated confidential.

SECTION 29-1-28. Confidentiality.

(a) Confidentiality of Records. Any record or document maintained by the Commission shall not be subject to being produced, copied or disclosed in any manner, except by order of a court of competent jurisdiction, by request pursuant to a compact provision, or by request of an administrative agency of the United States, if the Commission determines that the disclosure of such information would be harmful to the effective and fair regulation of gaming, would disclose trade secrets or proprietary information, or would impair ongoing investigations. Information and records of the Commission shall be deemed confidential and may not be disclosed except pursuant to the discretion of the Commission in proceedings before it, as required by the Compact or this Code, or pursuant to a court order of competent jurisdiction. Information and records considered confidential include:

- (1) Tax returns and financial statements of individual Licensees;
- (2) Applications, credit, medical and security reports of Applicants for licenses and other persons seeking or doing business with the Commission;
- (3) Marketing, financial or sales data, the disclosure of which may be harmful to the competitive position of Tribal gaming, Licensees or persons seeking or doing business with the Commission;
- (4) Audit work papers, worksheets and auditing procedures used by the Commission, its agents or employees; and

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- (5) Results of investigations, work products and other such privileged communications.

SECTION 29-1-29. License, Registration, or Permit Required.

(a) Persons, Entities, and Facilities Required to Be Licensed. The following persons, entities, and facilities shall be required to have, and facility licensees shall, display prominently an appropriate, valid, and current gaming license issued pursuant to the provisions of this Code:

- (1) Gaming Facilities operated by the Tribe where gaming activities are conducted;
- (2) Primary Management Officials;
- (3) Key Employees; and
- (4) Gaming Vendors.

(b) Withdrawal of Application. An application for a license pursuant to this Code may not be withdrawn without the permission of the Commission. An Applicant may request to withdraw an application by submitting to the Commission a written request for withdrawal. The Commission shall have the right, in its sole discretion, to grant or deny a request for withdrawal. A decision to deny a request for withdrawal shall be final and unappealable.

(c) License Fees. The Commission may adjust the amount of the annual license fee, provided, however, that such adjustments are subject to the review and approval of the Tribal Council, and further provided that any increase shall take effect only on the ensuing January 1.

(d) Licensee Rights. Any license that is issued under this Code is a revocable privilege and no person holding a license acquires any vested rights or other property rights in it. Any Applicant for a license has the burden of proof of his, her, or its qualification as regards to his or her past conduct, as may be required by the Commission.

(e) Non-Gaming Vendor Registration. Every Non-Gaming Vendor providing services or goods to the gaming operation, other than a federally, state, or tribally regulated publicly traded public utility company, shall be subject to a requirement to register with the Commission and provide such information to the Commission as the Commission may by regulation require prior to contracting with or providing such goods and/or services to the Gaming Facility, provided that:

- (1) The Chairman of the Commission may, by regulation, exempt Non-Gaming Vendors from this registration requirement where the contract amount is de minimis, or the potential for unlawful or criminal conduct is negligible.
- (2) The Chairman of the Commission may, by regulation, require federally, state, or tribally regulated publically traded utility companies to register or be registered under this provision if he or she determines that there is a potential for criminal activity relating to the gaming operation contracting with such entities.

(f) Non-Key Employee Work Permit. Every employee of the gaming operation who is not a Primary Management Official or a Key Employee shall be required to have a work permit issued by the Commission. Such work permit shall not authorize an employee to conduct any activities requiring a gaming license under this Code, provided that the Commission may require any or all gaming employees to be licensed upon a finding by the Commission that the gaming operation is not compliant with the restrictions on the permissible duties and functions of work permittees.

SECTION 29-1-30. Facility Licenses.

(a) License Requirements. The Commission shall issue a separate facility license to each place, facility, or location where gaming takes place under this Code; provided:

- (1) Documentation is provided demonstrating that the Gaming Facility is located, or will be located if it is to be constructed, on the Tribe's Indian Lands;
- (2) The Gaming Facility is of sound physical structure with adequate, safe, and operational

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plumbing, electrical, heating, cooling and ventilation systems in place;

- (3) The gaming operation has provided a complete description of the premises and the name and address at which gaming will be conducted;
- (4) The Gaming Facility has been inspected and approved for safety by a qualified building and fire inspector approved by the Commission;
- (5) The Gaming Facility is equipped with security and surveillance equipment meeting or exceeding provisions set forth in Regulations established by the Commission;
- (6) The gaming operation has prepared and the Gaming Facility is subject to an emergency preparedness plan approved by the Commission;
- (7) The gaming operation has submitted all documentation required by applicable regulations of the NIGC for a new facility or, for renewal of a license, such information required for reissuing a license;
- (8) The gaming operation has provided such other information as the Commission shall require by regulation; and
- (9) The gaming operation has paid all applicable license and regulatory fees and assessments.

(b) Requirements of a Licensee. All facility Licensees shall comply with orders, directives, and regulations of the Commission, which, at a minimum, shall include the following requirements:

- (1) The Gaming Facility shall at all times be maintained in an orderly, clean and neat condition, both inside and outside the premises of the facility.
- (2) The Gaming Facility shall be subject to patrol by the Tribe's security and law enforcement personnel and, when authorized, local and state law enforcement and the Licensee shall cooperate at all times with such security and law enforcement officials.
- (3) The Gaming Facility shall be open to inspection by the Commission at all times.
- (4) The Gaming Facility shall continuously meet all applicable environmental, public health, and safety standards as established by the Commission or other authorized governmental units of the Tribe.
- (5) The gaming operation shall pay all appropriate regulatory fee assessments to the NIGC pursuant to 25 U.S.C. §2710(b)(4)(B)(i)(IV), and all other regulatory fees, fines, and assessments as may be applicable or required by Compact.
- (6) The Gaming Facility shall operate its gaming activities without any discrimination by reason of race, color, sex, or creed, provided, however, that nothing herein shall prevent the Licensee from granting hiring preferences to members of the Omaha Tribe in accordance with the Omaha Hiring Preference.

(c) Term. A facility license shall be valid for a term of three (3) years.

(d) Application and Renewal Deadlines. Applications for a facility license shall be submitted at least 120 days prior to the initial conduct of business, and at least sixty (60) days prior to its expiration if renewal is sought;

(e) Display of License. Every facility Licensee shall display in a prominent place a current and valid license for that location.

(f) License Unassignable. If the gaming operation elects to move operation of a Gaming Facility to a different location and operate under the same trade name, such action shall nonetheless be deemed to require the issuance of a new facility license for purposes of this Section and the Commission shall issue a new license in accordance with this Section.

(g) Penalties for Violations. Facility Licensees may be fined or have their privilege to conduct gaming activities and their license to game suspended, provided that any such suspension is authorized

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only in the event of the presence of a condition creating actual and imminent jeopardy to public health and safety, and may extend only so long as may be required to abate such condition; or may be subject to such other penalties or orders as may be appropriate by the Commission and the Courts of the Omaha Tribe if found in violation of any of the requirements of this Act, regulations issued under this Code, the Compact, or other applicable laws including IGRA.

SECTION 29-1-31. Gaming Licenses.

(a) Licenses. Every Key Employee and Primary Management Official must be licensed by the Commission. All such licensing shall be consistent with the NIGC's regulations found at 25 C.F.R. Parts 556 and 558. The Commission shall specify by promulgation of Regulations the licensing requirements for each position as may be necessary for the effective regulation of gaming.

(b) Eligibility. All Applicants must:

- (1) Be at least eighteen (18) years of age;
- (2) Not have been convicted, within the last ten (10) years of:
 - (A) any felony;
 - (B) any gambling-related offense;
 - (C) any offense of any degree involving fraud, misrepresentation or deception; or
 - (D) a drug-related offense.
- (3) Not ever have been convicted of any felony involving dishonesty or untruthfulness.
- (4) Not have been denied a gaming license by any gaming licensing jurisdiction; or currently have a gaming license presently under suspension by any gaming licensing jurisdiction or have had a gaming license Revoked by any other gaming licensing jurisdiction;
- (5) Not be employed in any part-time or full-time employment with a tribal, governmental or private employer in any capacity which would create a conflict of interest between the Applicant's employment and the interests and objectives of the licensed employment;
- (6) Be of good moral character;
- (7) Be qualified or trainable (by experience or otherwise) to perform the duties required;
- (8) Agree to comply with the Regulations, this Code, the Compact and with all other applicable laws and submit to the jurisdiction of the Commission and the civil jurisdiction of the Tribal Court;
- (9) Agree that the license shall be nontransferable thus prohibiting the Licensee from transferring any of its rights or duties relating to the license either directly or indirectly; and
- (10) Otherwise meet and maintain the suitability standards set forth in § 29-1-32(g) of this Code.

(c) Notices.

- (1) The following notices shall be placed on the application form for a Key Employee or a Primary Management Official before that form is filled out by an Applicant.

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a

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tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position.

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

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(d) Sworn Application. No license shall be issued under this Code except upon a sworn application filed with the Commission in such form as may be prescribed by the Commission and containing all of the mandatory information required for the license. Such form shall require agreement by the Licensee to abide by all requirements and restrictions in the license, this Code, the Compact, and all applicable laws, rules, and regulations.

SECTION 29-1-32. Background Investigations.

(a) Mandatory Background Investigations; Confidentiality. The Commission shall conduct, or cause to be conducted, a background investigation of Principals of a Gaming Vendor and Management Contractors and each Applicant for a position who is designated as a Key Employee or a Primary Management Official. Background investigations performed for the Commission may be performed by Tribal law enforcement authorities, provided that such authorities have access to the law enforcement records of the Federal Bureau of Investigation and such authorities are certified graduates of the federal law enforcement academy or the Nebraska or Iowa law enforcement academy, or the Federal Bureau of Investigation. In conducting the investigation, the Commission shall keep confidential the identity of each person interviewed during the course of the investigation.

(b) Background Information. The Commission shall request from each Principal, Primary Management Official, and Key Employee a sworn statement containing all of the following information:

- (1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (2) Currently, and for the previous years since the age of 18, business and employment positions held, ownership interests in those businesses, business and residence addresses and drivers license numbers;
- (3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the Applicant during each period residence listed under paragraph (B) (ii) of this section;
- (4) Current business and residence telephone numbers;
- (5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- (6) A description of any existing and previous business relationships with the gaming industry generally, and for any investments in any gaming operation, information on the ownership interests in the gaming operation, the exact dates and nature of the investment, the name and address of all other investors holding an interest of five (5) percent or more in the gaming operation, and the name and address of the gaming operation;
- (7) Military service history;
- (8) The name and address of any licensing or regulatory agency with which the person has filed an application for a professional or occupational license, whether or not such license or permit was granted;
- (9) A description of experience related to any gaming operation, the exact nature of the

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Applicant's role in the operation, the name and address of all immediate supervisors or parties to any gaming related agreement, the place any such agreement was performed, and the dates covered by the agreement, or when services or products were provided;

- (10) A complete financial statement;
- (11) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
- (12) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
- (13) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such, criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (b) (viii) or (b) (ix) of this section, the criminal charge, the name and address of the court involved and the date and disposition;
- (14) Information relevant to an occupational or professional license or permit, whether or not such license or permit was granted, including the type of license, the license number, dates held, the details surrounding any suspension, revocation, or other disciplinary action taken based on the license, and if not current, the reason it is not current;
- (15) A current photograph;
- (16) A physical description;
- (17) Agreement to provide any additional information as may be required by the Commission; and
- (18) Two (2) sets of fingerprints consistent with procedures adopted by the Commission according to 25 C.F.R. § 522.2(h), which shall be taken by the Commission and forwarded to the NIGC to be processed by the Federal Bureau of Investigation National Criminal Information Center. The Commission may submit an Applicant's fingerprint card to any additional Tribal, local or state criminal history check system or center as the Commission deems necessary or appropriate. Reports obtained from such fingerprint processing shall be incorporated into the Applicant's file.

(c) Interviews. In conducting a background investigation, the Commission or its agent shall interview the Applicant and a sufficient number of knowledgeable people, but not less than 3, such as previous employers, personal references and any other person(s) who may provide the Commission with a knowledgeable basis for making its eligibility determination. The Commission or its agent shall keep confidential the identity of each person interviewed in the course of the investigation.

(d) Reimbursement to Commission for Investigations. Any Applicant for a license under this Code shall reimburse the Commission for the costs of all investigations to determine if he/she is a suitable Licensee under this Code which are over and above the initial license fee charged at the time of application. By signing and filing an application, the Applicant authorizes the Commission to obtain information from other states, tribal governments, the United States, and all agencies and instrumentalities of the foregoing, regarding prior professional or gaming licenses, license applications, conduct of the Applicant or such information regarding any of the Applicant's shareholders, partners, agents or employees.

(e) Investigative Report. The Commission shall create and maintain an investigative report pursuant to 25 C.F.R. Part 556 of the NIGC's regulations. An investigative report shall include all of the following:

- (1) Steps taken in conducting a background investigation;
- (2) Results obtained;
- (3) Conclusions reached; and
- (4) The bases for those conclusions.

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(f) Temporary or Probationary Licenses. Prior to issuing a permanent license the Commission shall verify the truthfulness of the background information provided by the Applicant to the Commission and ensure that persons and entities licensed by the Commission are suitable for licensure. However, upon payment of the appropriate fees and the completion of such forms as the Commission deems appropriate, temporary licenses may be issued pending completion of background investigations and approval by the NIGC, provided that a permanent license is issued within ninety (90) days of the individual beginning work.

(g) Suitability Determination. The Commission shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of an applicant for a Key Employee or Primary Management Official license for employment in a gaming operation. If the Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ or contract with that person.

(h) Continuing Duty to Report. Applicants and Licensees shall have a continuing duty to provide any materials, assistance, or other information required by the Commission and to fully cooperate in any investigation conducted by or on behalf of the Commission. If any information provided on the application changes or becomes inaccurate in any way, the Applicant or Licensee must promptly notify the Commission of such changes or inaccuracies.

(i) Notice of Results. The Commission shall submit a notice of results of an Applicant's background investigation to the NIGC's Regional Office in St. Paul, Minnesota no later than sixty (60) days after an employee begins work. The notice of results shall contain:

- (1) The Applicant's name, date of birth, and social security number;
- (2) The date on which the Applicant began or will begin work as a Key Employee or Primary Management Official;
- (3) A copy of the suitability determination pursuant to Section 29-1-32(g); and
- (4) A summary of the information presented in the investigative report, which shall at a minimum include a listing of:
 - (A) Licenses that have previously been denied,
 - (B) Gaming licenses that have been revoked, even if subsequently reinstated,
 - (C) Every known criminal charge brought against the Applicant within the last ten (10) years of the date of application, and
 - (D) Every felony of which the applicant has been convicted or any ongoing prosecution.

(j) Records Retention. With respect to Key Employees and Primary Management Officials, the Commission shall retain the following for no less than three (3) years from the date of termination of employment:

- (1) Complete application files containing the background information listed in Section 29-1-32(b);
- (2) Investigative reports; and
- (3) Suitability determinations for inspection by the NIGC Chair for no less than three (3) years from the date of termination of employment.

SECTION 29-1-33. Issuance of Licenses; Adverse Licensing Actions.

(a) Granting a Gaming License.

- (1) Once the Commission has submitted a complete notice of results to the NIGC, the Commission may issue the license to the Applicant.

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- (2) Upon issuance of the license, the Commission shall notify the NIGC of such issuance within thirty (30) days.
- (3) If, within a thirty (30) day period after the NIGC receives a complete notice of results, the NIGC requests additional information or provides the Commission with a statement itemizing objections to the issuance of a license to the subject of the notice of results, the Commission shall respond to the NIGC's request and/or reconsider the application, taking into account the objections itemized by the NIGC. The Commission shall make the final decision whether to issue a license to such Applicant.
- (4) The gaming operation shall not employ as a Key Employee or Primary Management Official a person who does not have a license after ninety (90) days of beginning work.
- (5) If a license is not issued to an Applicant, the Commission shall notify the NIGC and shall forward copies of its suitability determination and notice of results to the NIGC for inclusion in the Indian Gaming Individuals Records System.

(b) Revocation or Suspension of License. Any license granted pursuant to this Code, except as may otherwise be specifically provided herein, may be Suspended or Revoked for any cause which may have prevented its issuance, or for violation by the Licensee, or any officer, director, agent, member or employee of the Licensee of this Code, or for violation of any Regulations adopted by the Commission or for conviction of a crime of moral turpitude or a felony. Such Suspension or Revocation may occur only after notice to the Licensee and an opportunity for a hearing and only upon evidence determined adequate by the Commission.

- (1) If, after the issuance of a permanent gaming license, the Commission receives notice from the NIGC that the NIGC is in possession of reliable information indicating that a Licensee is not suitable for employment, the Commission shall immediately suspend such license and provide the Licensee with written notice of suspension and proposed revocation.
 - (A) The Commission shall notify the Licensee of a time and a place for a hearing on the proposed revocation of a license.
 - (B) After a revocation hearing, the Commission shall decide to revoke or to reinstate a gaming license. The Commission shall notify the NIGC of its decision within forty-five (45) days of receiving notice from the NIGC regarding the Licensee's suitability pursuant to Section 29-1-33(b)(1).
- (2) In addition to Revocation or Suspension or in lieu of Revocation or Suspension, the Commission may impose a reprimand or an administrative fine not to exceed the following amounts:
 - (A) If a Licensee is a Primary Management Official, the amount of \$50,000 for each violation; and
 - (B) If a Licensee is a Key Employee, the amount of \$25,000 for each violation.
- (3) A standard of reasonableness shall apply to the Commission in relation to the exercise of its authority to assess fines, penalties, and other sanctions, taking into account the seriousness of the violation, degree of culpability of the offending licensee, and other relevant factors. The Tribal Court shall have authority to abate or set aside any fine, sanction, or penalty assessed by the Commission upon a finding that the assessment was excessive in relation to the offense or otherwise unreasonable under the circumstances.

(c) Adverse Licensing Action Procedure.

- (1) Notice. The Commission shall issue notice to an Applicant or Licensee of the Commission's preliminary decision to deny an application for a license or to suspend, revoke, limit, modify, restrict, condition or cancel the Licensee's gaming license, which notice shall inform the Licensee of the basis for the Commission's preliminary decision and of all due process rights available to the Applicant or Licensee.

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- (2) No Adverse Action. The Commission's decision to limit, modify, restrict, condition, or cancel a license shall not be deemed an adverse action requiring a hearing and shall not be appealable except upon a showing, supported by substantial evidence, that such decision was the result of bias, prejudice, or other wrongful purpose; provided that the Commission may in its discretion accord a Licensee an opportunity to show cause why the license should not be limited, modified, restricted, conditioned, or cancelled. The Commission may, in its sole discretion, grant an oral hearing or require a written submission, however, the Commission's denial of a hearing upon an allegation of bias, prejudice, or other wrongful purpose and proffer of evidence to such effect shall be appealable to the Tribal Court.
- (3) Entitlement to Hearing. Unless otherwise provided in this Code, an Applicant or Licensee, as appropriate, shall, upon written petition, be entitled to a hearing before the Commission prior to denial of an application or the revocation or suspension of a license.
- (4) Petition for Hearing. Denial of a license may be contested by an Applicant and the revocation or suspension of a license may be contested by a Licensee as an adverse action in accordance with the procedures set out in Section 29-1-44. To invoke the right to a hearing, the Applicant or Licensee must submit a written petition for hearing to the Commission within ten (10) days from the date of service or delivery of the Commission's notice of proposed denial or revocation.
- (5) Right to Counsel. An Applicant or Licensee subject to a notice of adverse action shall be entitled to be represented by an attorney and must be present and participate in the proceeding.
- (6) Waiver of Right to Hearing. If the Applicant or Licensee fails to invoke the right to a hearing within ten days from the date the Commission's notice or proposed denial or revocation is delivered to or served upon the Applicant or Licensee, such inaction shall operate as a waiver of the right of appeal, in which case, the Chairman's preliminary decision shall be entered as a final order not subject to further appeal.
- (7) Hearing Date. If the Applicant or Licensee invokes the right to a hearing, the Chairman shall set a date for such hearing to take place within sixty (60) days unless extended by mutual consent of the Chairman and the respondent.
- (8) Right to Appeal. If, after such hearing, the Chairman renders a final adverse determination with regard to a gaming license, the Licensee may appeal the decision to the Tribal Court.
- (9) Prohibition on Limitations. Nothing in this Section shall limit the Chairman's authority to summarily issue an order directing action by a Licensee, an order to cease and/or desist, or an order suspending a gaming license pending hearing upon a written finding that such order is necessary to:
 - (A) Cure an imminent threat to the integrity of gaming at the gaming enterprise;
 - (B) Protect the Tribe's property or assets; or
 - (C) Ensure the public health and safety of patrons and employees.

SECTION 29-1-34. Gaming Vendor License.

(a) License Requirements and Scope. The Commission shall issue a license to each Gaming Vendor that qualifies for a license under this Code. The license shall grant the Applicant the revocable privilege of contracting with or entering into a financing arrangement or other business arrangement with the gaming operation.

(b) Application and Licensing Deadlines. Before a Gaming Vendor may contract or enter into any other business arrangement with the gaming operation, a completed application for a license shall be provided to the Commission by the Applicant, which application shall contain all of the information required under this Section. The Commission shall conduct the background investigation and make the

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suitability determination in this Section to determine whether or not to grant the license.

(c) Background Investigation. A background investigation for each prospective Gaming Vendor or Gaming Financier requiring a license shall be conducted by the Commission. The background investigation must include all of the following actions:

- (1) Verification of the Applicant's identity and the information submitted by the Applicant on the license application;
- (2) Contacts with the Applicant's personal and business references;
- (3) A civil, criminal, and credit history check; and
- (4) A background investigation, as more specifically described in Section 29-1-32, of all individuals who are a Principal, Key Employee, or Primary Management Official of the Gaming Vendor.

(d) Suitability Determination. The Commission may deny the Applicant a Gaming Vendor license if the Commission concludes the Applicant:

- (1) Is not sufficiently stable and capitalized;
- (2) Is owned, operated, or managed by persons who fail to meet the suitability standards in this Code; or
- (3) Has a history of performance failure or contentious business relationships.

SECTION 29-1-35. Non-Gaming Vendor Registration

(a) The Commission shall establish a program for the registration of Non-Gaming Vendors.

SECTION 29-1-36. Application/License Fee; Resident Agent; Notices.

(a) Fees. The Commission may establish an application fee which, at the option of the Commission, shall include the cost of the background investigation. The fee may vary with the type of license for which application is made and is nonrefundable.

(b) Resident Agent. Any person who does not reside within the Tribe's territories or any corporation, firm, partnership or other entity that does not have an agent present within the Tribe's territories shall appoint the Secretary of the Tribal Council as agent for the service of process and other documents under this Code. The Commission shall maintain a list of all such nonresidents and when serving documents upon the Secretary of the Tribal Council shall also provide the Secretary with an envelope addressed to such nonresident, first-class postage prepaid, and the Secretary shall mail the documents to the nonresident no later than the first business day following receipt. Service upon the Secretary shall be made in the manner specified for civil suits under Tribal law and shall be deemed complete upon such service, regardless of whether the papers or documents are ultimately received by the Licensee or Applicant. It is the responsibility of Licensees and Applicants to keep their addresses listed with the Commission current.

(c) Notices. Notice, when required by this Code, shall be given by registered or certified mail and shall be considered to be complete upon placing the properly addressed notice in the U.S. mail, postage prepaid, regardless of whether such notice is actually received. The burden shall be on Licensees and Applicants to keep the Commission advised of their current mailing address. In all contested cases, papers shall, be served in the manner provided for in civil matters under the Tribal Code.

SECTION 29-1-37. Minimum Standards for Inspection and Approval of Gaming Devices.

(a) Prior to the installation and use of a gaming device, the Commission shall inspect, test and consider the gaming device for its approval or cause such inspection and testing to be done. The Commission shall not approve a Class III gaming device unless the tests conducted indicate that such Class III gaming device meets the minimum standards set forth in the Compact.

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SECTION 29-1-38. Gaming Management Responsibility; Operational Procedures.

(a) Gaming Management Responsibility. The Operator of any Gaming Facility shall supervise and be directly responsible for all activities in such Gaming Facility licensed under this Code and for:

- (1) The compliance of all such activities with the terms of the facility license and the applicable terms of this Code and regulations issued under this Code;
- (2) The compliance by all employees of the gaming operation licensed under this Code with the terms of their licenses;
- (3) Assuring that the gaming operation works with Gaming Vendors and Gaming Financers in a manner that assures that they are not engaged in any activities exceeding the scope of their licenses under this Code as they relate to functions of the gaming operation or in contravention of any applicable laws;
- (4) Securing a license from the Commission for each electronic or other game to be placed into operation at a Gaming Facility, including providing such Gaming Vendor information to the Commission as it may require related to the procedures and policies for payout, accumulation, and account restrictions for funds, including for progressive payout games, and the safeguards built into the hardware and software associated with the electronic game.

(b) Gaming Requirements.

- (1) Restriction on Games Allowed. The gaming operation may only use or employ games authorized by IGRA and/or the Compact and approved by the Commission. Electronic games may only be used when supplied by Gaming Vendors licensed by the Commission meeting the applicable technical standards. The Commission may assess a fee for such approval and for re-approval when required by a modification to the hardware or software of the game.
- (2) Prize Awards. Every prize awarded by the gaming operation may be awarded only to the person(s) actually winning the prize, provided that prizes shall not be awarded to minors or any person subject to an order of exclusion from the gaming premises.
- (3) Malfunctions. A malfunction of a gaming system and/or gaming hardware shall void all pays and plays. A notice of this restriction shall be affixed to each gaming device.
- (4) Exclusion of Licensee from Participating in Promotions. No Licensee employed by the gaming operation or providing Gaming Goods or services shall be eligible to participate in any promotion of the gaming operation or to receive any promotional prize.

(c) Accounting and Cash Control. The Commission shall require all Primary Management Officials to adhere to accounting and cash control procedures as stringent as those set forth in the Compact.

(d) Game Rule Posting. Specific rules for card games, if any, shall be approved by the Commission and clearly posted within plain view of the card table or be available in pamphlet form.

SECTION 29-1-39. Records; Inspections; Insurance Policy.

(a) Maintenance of Records; Time. Each Gaming Facility shall keep and maintain sufficient books and records to substantiate the receipts, expenses, and uses of revenues relating to the conduct of gaming activities authorized under a license. Included in the records shall be operational budgets and projections and compensation. All books and records relating to gaming activities, including the records of any Primary Management Official, the Tribe and the Commission must be maintained separately from each other in order to facilitate auditing of these books and records to ensure compliance with this Code, the Regulations and the Compact. All records shall be maintained for a period of twelve (12) years pursuant to generally accepted accounting principles and shall be suitable for audit pursuant to the standards of the American Institute of Certified Public Accountant (AICPA).

(b) Inspection by Commission. All books and records of each Gaming Facility relating to licensed gaming activities shall be subject to inspection, examination, photocopying and auditing by the

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Commission or a person designated by the Commission at anytime during reasonable hours.

(c) Insurance Policies. A copy of all insurance policies covering each Gaming Facility or any part thereof shall be filed with the Commission.

SECTION 29-1-40. Investigation.

(a) Whenever the Tribal Council or the Commission has reason to believe that any person or entity has violated criminal law(s), the Tribal Council or the Commission may request that appropriate law enforcement authorities investigate the violation. The Tribe shall take all reasonable steps to ensure that all criminal violations are detected and appropriately prosecuted by the Tribe or referred to the United States Attorney.

SECTION 29-1-41. Violations.

(a) Generally. In addition to other acts that may be regulated or prohibited by this Code, other Omaha Tribal laws, the Compact, or other applicable laws and regulations, the following prohibited activities shall constitute civil violations under this Code and may subject any person or entity to the enforcement authority of the Commission as provided in this Code:

- (1) Gaming License. No person shall operate or conduct any gaming activity in a Gaming Facility without a gaming license issued by the Commission, as required by this Code.
- (2) Falsifying or Omitting Information. No Licensee or license Applicant shall intentionally omit or provide false information in connection with any document or proceeding under this Code.
- (3) Accounting and Inspection.
 - (A) No Primary Management Official shall fail to account fully for all monies received or collected in connection with gaming activities.
 - (B) In compliance with 25 C.F.R. Part 571 of the NIGC's regulations, a Gaming Facility shall not refuse to allow an authorized representative of the NIGC or an authorized Commission official to enter to inspect a Gaming Facility.
- (4) Age Limit. No person under the age of twenty-one shall participate in Class III Gaming. In the event a person who has not attained the age of twenty-one participates in any Class III Gaming and wins a prize, the prize shall not be awarded, but instead shall be forfeited to the Tribe and the consideration wagered shall be returned to the under-age participant.
- (5) Cheating. No person shall engage in cheating in any gaming activity.
- (6) Possession of a Firearm. No person, other than a law enforcement officer duly authorized by the Tribe or invited by the Tribe to be on the premises, may enter or remain in a Gaming Facility while in the possession of a firearm or other weapon.
- (7) Violation of Any Provision, Rule, Regulation, or Order. No person shall violate any provision of this Code or any order of the Commission.
- (8) Fraudulent Scheme or Techniques. No person playing in or conducting any gaming activity authorized under this Code shall:
 - (A) Use bogus or counterfeit cards, or substitutes or use any game cards that have been tampered with;
 - (B) Employ or have on one's person any cheating device to facilitate cheating in any gaming activity;
 - (C) Use any fraudulent scheme or technique, including when an operator or player of games of charitable gaming tickets directly or indirectly solicits, provides, or receives inside information of the status of the game for the benefit of either person; or
 - (D) Knowingly cause, aid, abet, or conspire with another person or any person to violate any

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provision of this Code or any regulation adopted pursuant to this Code.

- (9) Failure to Maintain Suitability. It shall be a substantial violation for any Licensee to fail or cease to meet the suitability standards established by this Code.
- (10) Fraudulent Conduct. It shall be a substantial violation of this Code for any person or entity to engage in any fraudulent conduct, which shall include:
- (A) Defrauding the Operation, Omaha Tribe, any Licensee, or any participant in any gaming activity or promotion;
 - (B) Providing information that is known or should have been known to be false or making any false statement with respect to an application for employment or for any license or permit;
 - (C) Claiming, collecting or taking or attempting to claim, collect or take money or anything of value in or from a Gaming Facility with intent to defraud or claiming, collecting or taking an amount greater than the amount actually won in such Game;
 - (D) Providing information that is known or should have been known to be false or misleading or making any false or misleading statement to the Tribe, Commission, or other civil or criminal law enforcement agency of the Tribe in connection with any contract for services or property related to gaming;
 - (E) Making any statement that was known or should have been known to be false or misleading in response to any official inquiry by the Commission or other civil or criminal law enforcement agency of the Tribe;
 - (F) Falsifying, destroying, erasing, or altering any books, computer data, records, or other information relating to gaming operations or a Gaming Facility;
 - (G) Entering into any contract, or making payment on any contract for the delivery of goods or services to a Gaming Facility, when such contract fails to provide for or result in the delivery of goods or services of less than fair value for the payment made or contemplated;
 - (H) Concealing, altering, defacing, or destroying any records, documents, information, or materials of any kind, including but not limited to, photographs, audio recordings, or videotapes;
 - (I) Offering or attempting to offer anything of value, to a Licensee in an act that is an attempt to induce, or may be perceived as an attempt to induce, the Licensee to act in a manner contrary to the official duties of the Licensee; and
 - (J) Acceptance by a Licensee of anything of value with the expectation that the receipt of such thing of value is intended, or may be perceived as intended, to induce the Licensee to act in a manner contrary to the official duties of the Licensee.
- (11) Unlawful Diversion of Tribal Gaming Revenue. It shall be a substantial violation of this Code for any person or entity to divert gaming revenues for any unauthorized purpose of any kind.
- (12) Impeding a Tribal Investigation. It shall be a substantial violation of this Code for any person or entity to impede a Tribal investigation.
- (13) Improper Interference. It shall be a substantial violation of this Code for any person or entity to engage in:
- (A) Acts or omissions of an individual that interfere with or prevent the Commission from fulfilling its duties and responsibilities under this Code; or
 - (B) Making any offer or any promise of consideration or thing of value for the purpose of affecting a decision or actions of the Commission.

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(14) Failure to Comply With Omaha Tribal Gaming Commission Regulations. It shall be a violation of this Code for any person or entity subject to the jurisdiction of the Omaha Tribe to:

- (A) Handle cash in a manner inconsistent with Tribal Regulations;
- (B) Allow, assist in, or carry out the installation of gaming machines in a manner that is inconsistent with installation requirements established by the Commission;
- (C) Fail to adhere to gaming license Regulations or promptly report to the Commission the presence on the floor of any Gaming Facility any gaming machine that is not properly licensed; or
- (D) Refuse to comply with any lawful order, directive, request, or demand of the Commission.

(b) Gaming Management. In addition to any other violation set forth in subsection (a) above in this Section, it shall be a violation of this Code for any gaming manager, employee, or other responsible person or Tribal official to:

- (1) Fail to keep appropriate books and records sufficient to substantiate the income and expenses and to verify the propriety of all expenditures and disbursements by any component of the gaming operation or activity;
- (2) Falsify any books or records related to any transaction connected with the holding, operating, or conducting of any gaming activity or gaming promotion;
- (3) Make any unauthorized payments or disbursements;
- (4) Convert for one's personal use any funds, property, or other assets of gaming operations;
- (5) Place unlicensed or unauthorized gaming equipment on the gaming floor or permit the play of unauthorized games;
- (6) Fail to report observed violations of this Code to the Commission;
- (7) Fail to comply with any lawful order or directive of the Commission; or
- (8) Fail or refuse to report any matter so required to be reported to the Commission by this Code.

(c) Duty to Report. It shall be a duty of the gaming operation to refer any suspected violations of this Code to the Commission.

(d) Discretion of Commission. Any person found to be in violation of any of the foregoing by the Commission may be permanently excluded from the Gaming Facility, have his or her license suspended or revoked, or be subject to such lesser sanction as may be imposed by the Commission. The Commission shall have the discretion to bring an enforcement action against any person or entity whose actions or inactions present an actual or imminent threat or danger to the public health and safety of the facility or its patrons or to the integrity of gaming. Actions taken by the Commission under this provision shall at all times be reasonable and prudent and the specific grounds for such action must be documented.

SECTION 29-1-42. Forfeiture; Restraint.

(a) Forfeiture. Any property used in the commission of a violation of this Code or the Regulations may be seized and, following a hearing, forfeited to the Tribe and disposed of by the Commission.

(b) Restraining and Questioning of Person Suspected of Violating Code.

- (1) Any Primary Management Official, his/her officers, employees or agents, may question any person in his/her establishment suspected of violating any of the provisions of this Code.
- (2) Any Primary Management Official or any of his/her officers, employees or agents who have probable cause for believing that there has been a violation of this Code or the Regulations in his/her establishment by any person may restrain that person for the sole purpose of

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transferring the person to the custody of appropriate law enforcement officials. In no event shall such person be detained for more than two (2) hours except upon request of law enforcement officials.

SECTION 29-1-43. Civil Jurisdiction.

(a) Civil Enforcement Actions. The Commission may take any or a combination of the following actions with respect to any person or entity who violates any provision of this Code:

- (1) Impose a civil fine for each violation, and if such violation is a continuing one, for each day of such violation;
- (2) Suspend, deny, or revoke any gaming or gaming-related license;
- (3) Temporarily or permanently exclude, bar, or deny admission from or to the Gaming Facility, provided that the sanction shall be commensurate with the seriousness of the violation; and/or
- (4) Issue, as appropriate, orders to cease and desist, compel, cure, or such other orders as may be appropriate under the circumstances.

(b) Notification. The Commission shall provide notice to the affected person or entity, explaining the alleged violation, the proposed action or sanction, and the steps needed for cure, if any. Such notice may be delivered in person or by letter to his/her last known address and shall describe the procedures to be followed for appeal.

(c) Civil Fines.

- (1) In determining whether to levy an administrative fine and the amount of the fine, a standard of reasonableness shall apply, taking into consideration the seriousness of the violation, the Licensee's history of violations, and whether the Licensee derived financial gain as a result of the violation.
- (2) If an administrative fine is levied, such fine shall be remitted by the Licensee to the Commission within 30 days from the date of the order issued by the Commission imposing such fine. Any unpaid administrative fine shall constitute a debt to the Commission, which debt may be sued upon and recovered in any proper form of action in the name of the Commission in either the Tribal Court or the United States District Court or in any other court of competent jurisdiction.
- (3) All fines levied by the Gaming Commission shall be deposited into Tribe's general fund.

(d) Cease and Desist Orders.

- (1) An order to cease and desist shall give reasonable notice of the rights of the license holder to request an administrative hearing before the Commission and shall state the reason for the entry of the order. Failure to cease and desist upon service of such an order shall be grounds for disciplinary action by the Commission.
- (2) A hearing shall be held not later than 10 days or upon mutual agreement of the Commission and the party after the request for the hearing is received by the Commission and, within 20 days after the date of the hearing, the Commission shall issue an order vacating the cease and desist order or making it permanent, as the facts require. Licensees shall be entitled to a single continuation of not more than thirty days upon good cause shown. All hearings shall be held in accordance with the Code and Regulations.
- (3) If the license holder to whom a cease and desist order is issued fails to request a hearing within 30 days following the entry of such order or fails to appear at the hearing after being duly notified, the license holder shall be deemed in default and the proceeding may be determined against the license holder upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

(e) Acknowledgement. Every person or entity that applies for a gaming license and accepts such

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license thereby acknowledges the civil enforcement jurisdiction and authority of the Commission under this Code.

SECTION 29-1-44. Hearings and Appeals.

(a) Applicability. All hearings conducted pursuant to this Code except hearings regarding the removal of a Commissioner shall be governed by this Section.

(b) Adverse Licensing Action Hearings. The Commission shall afford an Applicant an opportunity for a hearing prior to any final action by the Commission on an application for licensure. The Commission shall afford a Licensee the opportunity for a hearing prior to taking final action resulting in the revocation of a license or the imposition of any penalties which the Commission is authorized to impose under this Code. To invoke the right to a hearing, an Applicant or Licensee must submit a written petition for hearing to the Commission within ten (10) days from the date of service or delivery of the Commission's notice of proposed denial or revocation. Such notice may be served by registered or certified mail or it may be personally served on the Applicant or Licensee. If the Applicant or Licensee invokes the right to a hearing, the Commission shall set a date for such hearing to take place within sixty (60) days unless extended by mutual consent of the Commission and the respondent.

(c) Notice of Hearings. The Commission shall provide written notice to the Applicant or Licensee of a hearing at least seven days prior to the date set for the hearing. The day the Applicant or Licensee receives the notice shall be considered a full day's notice under this Section. The notice shall be sent by registered or certified mail, or may be personally served upon the Applicant or Licensee. The notice shall state the date, time, and place of the hearing. The notice shall also contain an indication of the actions being considered by the Commission.

(d) Ex Parte Communications. Ex parte communications with the Commission by or on behalf of an Applicant, Licensee, or alleged violator subject to a hearing under this Section shall be prohibited and no person or party shall act to unduly influence the outcome of any matter pending in such a hearing. Nothing in this Section shall prohibit the Applicant or Licensee from communicating with the Commission's legal counsel, its investigators, or other authorized personnel or agents.

(e) Appearance through Counsel. Parties to all hearings may appear personally or through an attorney, except that an Applicant or Licensee subject to a notice of adverse licensing action must be present and participate in the proceeding. For all other non-licensing matters, a party must personally attend any hearing on the merits unless his or her attendance has been waived, in writing, by the Commission. When a party appears through an attorney, service of all notices, motions, orders, decisions, and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing. When a party is represented by an attorney, the attorney shall sign all motions, notices, requests, and other papers on behalf of the party, including a request for subpoenas.

(f) Discovery Procedures for Hearings. The Commission by regulation shall prescribe the method and means through which discovery shall be effected.

(g) Subpoenas. The Commission has the power and discretion to issue subpoenas and to impose such reasonable penalties for noncompliance. Subpoenas may be issued to compel any person to appear at the hearing on the merits of the case, to give oral testimony, or to produce documents or other tangible things.

(h) Hearing Procedures. The Commission may preside over all hearings, in which case the Chairman shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings. Alternatively, the Commissioner may, in his or her discretion, appoint a hearing officer to conduct the adjudication and shall do so in the event of a conflict of interest.

(1) The Commission may require any person including, but not limited to, any Applicant or Licensee, or any agent, employee or representative of any Applicant or Licensee, to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters which the Commission deems relevant to the discharge of the Commission's official duties. A written record or audio recording of the proceeding shall be kept.

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- (2) Failure to appear and testify fully at the time and place designated shall be deemed an admission of the facts alleged by the Commission, and any notices issued by the Commission, including but not limited to a Preliminary Notice of Violation, shall be deemed final.
- (3) Any party to the hearing may call and examine witnesses. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is repetitive, irrelevant, or immaterial.
- (4) The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.
- (5) Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.
- (6) Any party to the hearing may conduct cross examinations reasonably required for a full and true disclosure of the facts.
- (7) All hearings held under this Section shall be open to the public.
- (8) The Commission, in its discretion, has the power to sequester witnesses.
 - (i) Evidence. In hearings governed by this Section, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.
 - (1) All evidence, including records and documents in the possession of the Commission or of which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
 - (j) Determinations by the Commission. The Commission shall make all determination of issues before it by a majority vote of the Commission. The imposition of any sanctions or penalties shall be made by motion and on the record. A copy of any resolution reached by the Commission shall be served upon the Applicant or Licensee by registered or certified mail, or may be served personally.
 - (k) Appeals. If, after a hearing, the Commission renders a final adverse determination, such final determination may be appealed to the Omaha Tribal Court. Failure to file an appeal with the Omaha Tribal Court within thirty (30) days of the date of the final determination shall make the decision of the Commission final and not subject to further judicial review.
 - (1) Upon hearing of the appeal, the Tribal Court shall give proper deference to the administrative expertise of the Commission. The Tribal Court shall not set aside, modify, or remand any determination, except in relation to the reasonableness of fines, penalties, or sanctions, by the Commission unless it finds the determination to be arbitrary and capricious, unsupported by substantial evidence, or contrary to law.
 - (2) The Tribal Court shall issue a written decision on all appeals. In no event shall the Court be authorized to award or order payment of damages by the Commission.

SECTION 29-1-45. Patron Disputes.

- (a) Prize Claims. In the event of a dispute between a patron and the Gaming Facility regarding the payment of a wager or distribution of winnings, the patron may make a claim against the Gaming Facility as follows:
 - (1) Notice.
 - (A) Any person having a prize claim shall file a written prize claim notice with the gaming

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operation on the date of the alleged incident and prior to leaving the Gaming Facility premises.

- (B) If the operation denies the prize claim, the claimant shall have forty-eight (48) hours from the date the claim was denied to file the prize claim with the Commission. Failure to file the prize claim during such 48-hour period of time shall forever bar such prize claim.
 - (C) The written notice of the prize claim shall state the time; date; place and circumstances of the claim; the identity of the affected Licensees or employees, if known; the amount of relief demanded; the name, address, and telephone number of the claimant.
 - (D) Notices explaining this procedure shall be posted in the Gaming Facility. Such notices shall explain that this procedure is the exclusive method of making a claim or registering a patron's dispute. Such notices shall also explain that upon denial of a claim by the Commission, redress must be sought exclusively in Tribal Court.
- (2) Procedure Upon Notice.
- (A) Upon receipt of notice of prize claims, the Commission shall promptly review, investigate, and make a determination regarding the prize claim.
 - (B) Any portion of the prize claim, which remains unresolved after thirty (30) days from the date of filing, shall be deemed denied if the Gaming Commission fails to notify the claimant in writing of its approval within such 30-day period.
 - (C) To appeal the Gaming Commission's decision, the claimant must file an appeal in the Omaha Tribal Courts no later than on the thirtieth (30th) day after the date on which the claimant received notice of the Gaming Commission's decision.
- (3) Judicial Proceeding. A judicial proceeding for any cause arising from a prize claim may be maintained in accordance with and subject to the limitations set forth in this Section only if the following requirements have been met:
- (A) The claimant has followed all procedures required in this Section, including without limitation, the delivery of a valid and timely written prize claim notice to the Gaming Commission;
 - (B) The Gaming Commission has denied the prize claim; and
 - (C) The claimant has filed an appeal in the Omaha Tribal Court no later than thirty (30) days after denial of the claim by the Gaming Commission.
- (4) Limitation on Claims. In no event shall a prize claim result in a monetary award of an amount in excess of the available prize.
- (b) Other Claims. In the event of any alleged personal injury or property damage suffered within a Gaming Facility, the patron may make a claim against the Gaming Facility as follows:
- (1) Notice.
 - (A) Any person having a claim other than a prize claim against the Gaming Facility must present that claim to the Gaming Facility on the date of the alleged incident and prior to leaving the Gaming Facility premises. If, due to the circumstances, the patron is unable to file such claim on the date of the alleged incident, the patron or the patron's representative must file the claim within ten (10) calendar days from the date of the event which allegedly caused the loss.
 - (B) The written notice of a claim against the Gaming Facility shall state the time; date; place and circumstances of the claim; the identity of the effected Licensees or employees, if known; the amount of relief demanded; the name, address, and telephone number of the claimant.
 - (C) Notices explaining this procedure shall be posted in the Gaming Facility. Such notices

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shall explain that this procedure is the exclusive method of making a claim or registering a patron's claim. Such notices shall also explain that adjudication of all claims other than prize claims shall be held exclusively in the Omaha Tribal Courts.

(2) Procedure Upon Notice.

(A) The Gaming Facility shall have up to thirty (30) days from the filing date, to resolve the claim and notify the claimant in writing of its decision. Failure to notify the claimant of a decision within the specified 30-day period shall be deemed a denial of the claim.

(B) To appeal the Gaming Facility's decision, the claimant must file an appeal in the Omaha Tribal Courts no later than on the thirtieth (30th) day after the date on which the claim was denied.

(3) Adjudication. All claims other than a prize claim shall be adjudicated exclusively in the courts of the Omaha Tribe. The Omaha Tribal Court shall have original and exclusive jurisdiction to adjudicate such claims brought by a gaming patron only if:

(A) The purported injury or loss occurred within the premises of a Gaming Facility;

(B) The claimant has followed all procedures required by this Section, including without limitation, the delivery of a valid and timely written notice to the Gaming Facility;

(C) Following an investigation of the alleged injury or loss, the Gaming Facility has denied the patron's claim;

(D) The claimant has filed an appeal in the Omaha Tribal Courts no later than on the thirtieth (30th) day after the date on which the claimant received notice of the Gaming Facility's decision.

(4) Insurance. The Operator shall maintain in good standing a public liability insurance policy with a registered and solvent insurance company, on behalf of the Tribe for the purpose of covering patron claims.

(5) Limitations on Claims. The Omaha Tribal Court shall have no jurisdiction to award damages to any claimant in excess of the limits of the gaming operation's liability insurance policy, and no judgment may be entered or recovered except as against the gaming operation's public liability insurance policy.

(c) Sovereign Immunity. Nothing in this Section shall be deemed a waiver of the Operator's or Omaha Tribe's sovereign immunity from unconsented suit.

SECTION 29-1-46. Exclusion or Ejection of Certain Persons from Gaming Establishment.

(a) Exclusion of Persons Required for Effective Regulation. The Tribe hereby declares that the exclusion or ejection of certain persons from licensed gaming establishments is necessary to carry out the policies of this Code and to maintain effectively the strict regulation of gaming activities. The Gaming Facility shall be authorized to remove and exclude such persons deemed unruly, disruptive, or who otherwise pose a threat to the integrity of gaming operations or to the public health and safety of gaming patrons and employees or other persons on the premises.

(b) Exclusion List; Considerations. The Commission may provide each establishment with a list of persons who are to be excluded or ejected from any licensed Gaming Facility, including any person whose presence in the establishment is unruly, disruptive, or poses a threat to the public health and safety of gaming patrons and employees. In making the determination for exclusion, the Commission may consider any of the following:

(1) A prior conviction of a felony, a misdemeanor involving moral turpitude or a violation of the gaming laws of any Indian tribe, state, the United States, or any of its possessions, enclaves, or territories;

(2) A violation, attempt to violate, or conspiracy to violate the provisions of this Code, or the

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Regulations, including: failure to make required disclosures to the Commission or the intentional evasion of fees or taxes;

- (3) A notorious or unsavory reputation that would adversely affect public confidence and impact the trust that the public has regarding the gaming industry as free from criminal or corruptive influences; and
- (4) The opinion of the Commission, that the presence of a person in a licensed Gaming Facility would be harmful to the interest of the Tribe, or Indian gaming generally.

(c) Procedure. The gaming operation shall within seventy-two (72) hours of ejecting or excluding any person from the premises for a period of more than ten day shall notify the Commission of such action.

(d) Notice to Excluded Person. If the name and description of any person is placed on the exclusion list, the Commission shall, within three (3) business days thereafter, serve notice of that action upon the person by at least one of the following means:

- (1) By personal service; or
- (2) By mail to the last known address of the person.

(e) Written Protest. A person placed upon the exclusion list may contest that action by filing a written protest with the Commission and the protest shall be heard by the Commission within thirty (30) days after filing, but all such exclusions shall become final and non-reviewable if no protest is filed within forty-five (45) days after such name is placed on the exclusion list.

(f) Voluntary Exclusion. The Commission shall by regulation establish a program providing a process for any person to involuntarily exclude him or herself from the premises of any Omaha Tribal gaming facility permanently or for a set term. During the term of such exclusion, any person subjecting him or herself to voluntary exclusion shall be removed from the premises should such person enter the premises and shall be ineligible to participate in any gaming or promotional activity conducted by Operator or within an Omaha Tribal gaming facility.

SECTION 29-1-47. Communications between Members of the Commission and its Agents.

Communications between members of the Commission and its agents or attorneys or any law enforcement authority or regulatory body relating to licensing, disciplining of Licensees, or violations by Licensees are privileged and confidential if made lawfully and in the course of and in furtherance of the business of the Commission, unless such communications were made public pursuant to an order of the Tribal Court after an in-camera review. Any member of the Commission or its agents may claim this privilege.

SECTION 29-1-48. Calculation of Time.

In computing any period of time prescribed or allowed by this Code or the Regulations of the Commission, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless the last day is a Saturday, a Sunday or a legal holiday under Tribal law or federal law. If the act to be done is the filing of or providing access to any report or document, and the last day of the period falls on a day in which the weather or other conditions have made the offices in which the report or document is to be filed inaccessible, the designated period shall extend until the end of the next day on which the office is accessible which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays under Tribal law or federal law shall be excluded from the computation period.

SECTION 29-1-49. Reserved