

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		CHANGE OF NAME	
CONVEYING PARTY DATA			
Name		Formerly	Execution Date
Tohono O'odham Gaming Enterprise		FORMERLY Tohono O'odham Gaming Authority	10/29/2004
			Entity Type
			99 Indian Tribal Enterprise: UNITED STATES
RECEIVING PARTY DATA			
Name:		Tohono O'odham Gaming Enterprise	
Street Address:		Post Office Box 22230	
City:		Tucson	
State/Country:		ARIZONA	
Postal Code:		857342230	
Entity Type:		99 Indian Tribal Enterprise: UNITED STATES	
PROPERTY NUMBERS Total: 1			
Property Type		Number	Word Mark
Serial Number:		76123010	DESERT DIAMOND CASINO
CORRESPONDENCE DATA			
Fax Number:		(520)203-0202	
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:		520-342-2021	
Email:		dquigley@desertdiamondcasino.com	
Correspondent Name:		Tohono O'odham Gaming Enterprise	
Address Line 1:		Post Office Box 22230	
Address Line 2:		Attn: Daniel J. Quigley, General Counsel	
Address Line 4:		Tucson, ARIZONA 857342230	
NAME OF SUBMITTER:		Daniel J. Quigley	
Signature:		/Daniel J. Quigley/	
Date:		05/28/2009	

OP \$40.00 76123010

Total Attachments: 36

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RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Amending the Charter of the Tohono O'odham Gaming Authority)

RESOLUTION NO. 04-513

1 **WHEREAS, the Legislative Council has provided in Section 301 of the Ordinance for Regulation**
2 **of Gaming Activities Within the Tohono O'odham Nation (the "Gaming Ordinance"),**
3 **adopted pursuant to Resolution No. 93-296, and amended by Resolution No. 03-084,**
4 **that all gaming activities, conducted within the Nation shall be owned entirely by the**
5 **Nation and conducted and operated by a tribal enterprise; and**

6 **WHEREAS, the Legislative Council, by adopting Resolution No. 93-311, established a tribal**
7 **enterprise known as the Tohono O'odham Gaming Authority (the "Gaming Authority")**
8 **to be responsible for operating the Nation's gaming facilities and conducting gaming**
9 **activities in compliance with the requirements of the Gaming Ordinance; and**

10 **WHEREAS, the Legislative Council, by adopting Resolution No. 03-231, previously modified the**
11 **Charter of the Gaming Authority; and**

12 **WHEREAS, the Gaming Authority has requested that the Legislative Council further modify its**
13 **Charter to allow the Gaming Authority to contract out the internal audit function and**
14 **to change the name of the Gaming Authority from the Tohono O'odham Gaming**
15 **Authority to the Tohono O'odham Gaming Enterprise; and**

16 **WHEREAS, the Commerce Committee of the Legislative Council has reviewed the proposed**
17 **modifications to the Gaming Authority's Charter and recommends that the**
18 **Legislative Council approve those modifications.**

19 **NOW, THEREFORE, BE IT RESOLVED THAT:**

- 20 **1. The Legislative Council does hereby modify the Charter of the Gaming Authority**
21 **in the manner set forth in the document attached in Exhibit A. Henceforth, the**
22 **Tohono O'odham Gaming Authority will be known as the Tohono O'odham**
23 **Gaming Enterprise and its Charter shall be as set forth in Exhibit B.**

24 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 18TH Day**
25 **of OCTOBER, 2004 at a meeting at which a quorum was present with a vote of 2,534.0 FOR; -0-**
26 **AGAINST; 95.70 NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by**
27 **Section 1 (e) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the**
28 **Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
29 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
30 **18, 1934 (48 Stat. 984).**

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RESOLUTION NO. 04-513

(Amending the Charter of the Tohono O'odham Gaming Authority)

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

for *Isidro Lopez*
Isidro Lopez, Legislative Chairman

27th day of October, 2004

ATTEST:

Rosita N. Ruiz
Rosita N. Ruiz, Legislative Secretary

27 day of October, 2004.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 27th day of October, 2004 at 1:25 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

for *Isidro Lopez*
Isidro Lopez, Legislative Chairman

APPROVED on the 29th day of October, 2004

DISAPPROVED at 11:36 o'clock, A.M.

Vivian Juan Saunders
VIVIAN JUAN SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 29 day of October, 2004, at 11:04 o'clock, A.M.

Rosita N. Ruiz
Rosita N. Ruiz, Legislative Secretary

Exhibit A

TOHONO O'ODHAM GAMING ~~AUTHORITY~~ ENTERPRISE CHARTER

SECTION 1: ESTABLISHMENT AND POWERS

- (a) **Establishment.** The Tohono O'odham Gaming ~~Authority~~ Enterprise is hereby established as an enterprise of the Tohono O'odham Nation pursuant to Article VI, Section 1(e) of the Nation's Constitution. The ~~Authority~~ Enterprise shall have and may exercise all those powers set forth herein, effective on the date all Directors of the Management Board are appointed by the Chairperson of the Nation and approved by the Legislative Council.
- (b) **Powers.** The ~~Authority~~ Enterprise is empowered and responsible to:
 - (1) Conduct gaming activities in gaming facilities in accordance with the terms and conditions of the Gaming Ordinance; and
 - (2) Take all actions necessary or advisable to carry out the foregoing functions consistent with the requirements of the Gaming Ordinance.

SECTION 2: DEFINITIONS

- (a) The term "~~Authority~~ Enterprise" means the Tohono O'odham Gaming ~~Authority~~ Enterprise established under this Charter.
- (b) The term "Chairperson of the Nation" means the Chairperson of the Nation whose office is established under Articles IV and VII of the Constitution.
- (c) The term "Constitution" means the Constitution of the Nation adopted by the O'odham people and approved by the Secretary of Interior on March 6, 1986 pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. § 476).
- (d) The term "District" means one of the eleven subdivisions of the Nation's government established under the Constitution.
- (e) The term "Employment Rights Ordinance" means the Papago Employment Rights Ordinance, Ord. No 01-85.
- (f) The term "Gaming Office" means the Tohono O'odham Gaming Office established under the Gaming Ordinance.
- (g) The term "Gaming Ordinance" means the Ordinance for the Regulation of Gaming Activities within the Tohono O'odham Nation, adopted by the Legislative Council pursuant to Res. No. 93-296.
- (h) The terms "gaming activity", "gaming facility" and "gaming operation" shall have the same meaning assigned to such terms in the Gaming Ordinance.
- (i) The term "Legislative Council" means the Nation's Legislative Council established under Articles IV and VI of the Constitution.

- (j) The term “Management Board” means the Board of Directors established under section 5 of this Charter.
- (k) The term “Nation” means the Tohono O’odham Nation, a federally recognized Indian tribe, organized under the Constitution.

SECTION 3: PLACE OF BUSINESS

The principal place of business of the ~~Authority~~ Enterprise shall be at such place within the territorial jurisdiction of the Nation as the Management Board may designate. The ~~Authority~~ Enterprise shall have such other offices as the Management Board may determine.

SECTION 4: PURPOSES

The ~~Authority~~ Enterprise is organized as an exercise by the Nation of rights of self-government under the Constitution and as one means to achieve economic self-sufficiency. The ~~Authority~~ Enterprise has the following specific purposes:

- (a) To establish an independent, financially self-sustaining and successful business enterprise;
- (b) To offer gaming activities within the Nation which are conducted pursuant to the highest standards of honesty and integrity, in facilities designed to assure the safety and comfort of gaming activity patrons;
- (c) To promote economic development through training and employment opportunities for members of the Nation; and
- (d) To produce the maximum economic return to the Nation consistent with the fair and reasonable expectations of gaming activity patrons.

SECTION 5: MANAGEMENT BOARD

(a) **Membership**

- (1) **Composition.** The Management Board shall consist of seven Directors.
- (2) **Appointment.** The Directors shall be appointed by the Chairperson of the Nation with the approval of the Legislative Council. No employee of the ~~Authority~~ Enterprise, the Gaming Office, or the Bureau of Indian Affairs, or elected official of the Nation or any District shall be eligible to serve as a Director.
- (3) **Qualifications.** Directors shall have the following qualifications:
 - (A) Not less than four of the Directors shall be members of the Nation;
 - (B) Each Director shall have sufficient education and business experience to make sound judgments concerning the operation of the ~~Authority~~ Enterprise; and

- (C) Each Director must obtain a gaming facility operator's license pursuant to the Gaming Ordinance prior to approval of the Director's appointment by the Legislative Council.
- (4) **Term.** Directors shall have staggered terms. Of the initial Directors, two Directors shall serve a term of one year, two Directors shall serve a term of two years, and three Directors shall serve a term of three years. Thereafter, all terms shall be for three years. Directors shall be eligible for reappointment upon expiration of their terms of office. Each Director shall hold office until his or her successor has been appointed and qualified.
- (5) **Removal, Resignation and Vacancies.**
 - (A) **Removal.** A Director may be removed by the Chairperson of the Nation if the Chairperson, in his or her sole discretion, determines that the best interests of the Nation shall be served by such removal.
 - (B) **Resignation.** A Director may resign at any time by giving written notice to the Chairperson of the Board and to the Chairperson of the Nation. Resignations shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Any Director who fails to attend three consecutive properly called and noticed meetings of the Management Board or who fails to attend two-thirds (2/3) of all Management Board meetings properly noticed in any fiscal year shall, unless excused from attendance for a justifiable cause, be considered to have resigned his/her directorship. The Chairperson of the Board shall promptly notify the Chairperson of the Nation concerning any such resignation.
 - (C) **Vacancies.** Any vacancy in the Management Board because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for appointment of Directors.

(b) **Officers; Powers and Duties.**

- (1) **Chairperson.** The Chairperson of the Management Board shall be a Director and shall preside at all meetings of the Board at which s/he is present. The Chairperson and the Secretary of the Board shall sign any instruments which have been authorized by the Management Board to be executed on behalf of the ~~Authority~~ **Enterprise**, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Charter to some other officer or agent of the ~~Authority~~ **Enterprise**, or shall be required by law to be otherwise signed or executed. The Chairperson shall perform all duties incident to the office of Chairperson of the Board and such other duties as may be prescribed by the Management Board from time to time.
- (2) **Vice Chairperson.** The Vice Chairperson of the Management Board shall be a Director and shall, in the absence of the Chairperson or in the event of his or her inability or refusal to act, perform the duties of the

Chairperson, and when so acting shall have all the powers and be subject to all the restrictions which pertain to the Chairperson.

- (3) **Secretary.** The Secretary of the Management Board may, but need not be, a Director and shall be responsible for:
 - (A) Keeping the minutes of the meetings of the Management Board in books and/or tapes provided for that purpose;
 - (B) Seeing that all notices are duly given in accordance with the provisions of this Charter;
 - (C) The safekeeping of the books and records of the ~~Authority~~ **Enterprise**;
 - (D) Keeping on file at all times a complete copy of this Charter and all amendments thereto; and
 - (E) In general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Management Board.
- (4) **Other Officers.** The Management Board may appoint such other officers and agents as it deems necessary. Such officers shall perform such duties as from time to time may be assigned to them by the Management Board.
- (5) **Election; Term of Office.** The officers shall be chosen annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have been approved by the Legislative Council. Each officer shall hold office until his or her successor is chosen and approved, or until his or her death, or until s/he shall have resigned, or shall have been removed in the manner provided herein.
- (6) **Removal; Resignation; Vacancies.**
 - (A) **Removal.** Any officer or agent elected or appointed by the Management Board may be removed by the Board at any time, with or without cause.
 - (B) **Resignation.** Any officer may resign at any time by giving written notice to the Chairperson of the Board. Such resignation shall take effect at the time specified therein, or if no time is specified, then on the date of receipt.
 - (C) **Vacancies.** Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein.

(c) **Meetings of the Management Board**

- (1) **Regular, Annual and Special Meetings.** Regular meetings of the Management Board shall be held at least once during each fiscal quarter.

The Management Board shall designate the month, week and day of the annual meeting which shall be recognized thereafter. The annual meeting shall be considered one of the Management Board's regular quarterly meetings. Special meetings of the Management Board may be held upon notice given by the Chairperson of the Board or by three Directors.

- (2) **Notice.** Notice of meetings stating the time, date, place and agenda shall be given in writing to each Director and officer of the Management Board by mailing such notice not less than ten days nor more than thirty days prior to the meeting, excluding the day of the meeting, provided that special meetings may be called upon no less than five days notice. Notice may be waived in writing by a Director entitled to such notice; attendance of a Director at a Management Board meeting shall constitute a waiver of notice.
- (3) **Quorum.** The presence at any meeting of four Directors shall constitute a quorum of the Management Board for transaction of any business. The act of a majority of the Directors present and voting at a meeting at which a quorum is present shall be the act of the Management Board.
- (4) **Rules.** The Management Board may adopt such rules as it may determine necessary for the orderly conduct of its business.
- (5) **Minutes.** The Secretary shall make arrangements for the recording of the minutes of the Management Board's meetings. Copies of the minutes of each meeting shall be kept on file in the office of the ~~Authority~~ **Enterprise** and shall be available for inspection at all reasonable times by Directors of the Management Board, officers of the ~~Authority~~ **Enterprise**, employees of the Gaming Office, the Chairperson of the Nation, the Chairperson of the Legislative Council, or any employee or official of the Nation designated by either of such Chairpersons in writing.
- (6) **Expenses.** Directors shall be reimbursed for reasonable expenses incurred in attending meetings and performing duties incident to their positions. The Management Board may set a reasonable stipend to be paid to Directors for attendance at meetings of the Board and performing duties incident to their positions.

(d) **Powers and Duties**

The Management Board shall exercise all powers and responsibilities consistent with the best interests of the Nation and within the limits of responsible business judgment. Subject to the foregoing, the provisions of section 1 of this Charter and other applicable law, the Management Board shall have the authority to exercise the following powers and duties:

- (1) Exercise general authority and responsibility for the management and operation of the ~~Authority~~ **Enterprise**.
- (2) Direct the operation of the ~~Authority~~ **Enterprise** and exercise the powers set forth below without previous authorization or subsequent approval (except as otherwise provided).

- (3) Manage and maintain all existing gaming facilities and be responsible for the planning, construction and management of all new or additional gaming facilities.
- (4) Establish and maintain effective operating and fiscal policies for the Authority Enterprise.
- (5) Select, supervise and direct the Chief Executive Officer and Internal Auditor and supervise and direct the manager of the Authority's Enterprise's Director of ~~Security and Surveillance~~ on matters of policy, purpose, responsibility, authority, and integrity of casino management.
- (6) Utilize, improve, maintain, operate and manage, in the ordinary course of business, all interests in real property held by the Authority Enterprise, including negotiation of leases or subleases of real property subject to approval of the Legislative Council; provided however, that nothing in this Charter shall be construed as authorizing the Authority Enterprise to mortgage or encumber trust or restricted real property of the Nation without the prior consent of the Legislative Council.
- (7) Acquire, hold, own, manage, operate, exchange, deal in and dispose of all Authority Enterprise personal property in the ordinary course of business.
- (8) Subject to the terms of section 8 of this Charter, pledge or grant security interests in the Authority's Enterprise's personal property, cash, accounts receivable and other assets (exclusive of any leasehold interests) as collateral for any contractual obligation.
- (9) Acquire, hold, own, use, license, and lease any interest in and to inventions, improvements, patents, licenses, formulas, privileges, processes, copyrights, trade names, trademarks and all applications therefor, provided that title of all such acquisitions shall be taken in the name of the Nation and such interests may be sold only with the prior consent of the Legislative Council.
- (10) Enter into, make, perform and carry out or cancel and rescind contracts for any lawful purpose pertaining to the Authority's Enterprise's business; provided, however that no contract or other transaction between the Authority Enterprise and any one of the Directors, officers or employees of the Authority Enterprise or an elected officer or employee of the Nation or any District, or between the Authority Enterprise and any corporation, partnership, firm or other legal entity in which one or more of the foregoing persons has a financial interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of such persons is fully disclosed to the Management Board and the proposed contract or transaction is approved, ratified or confirmed by the affirmative vote of at least a majority of the entire Management Board who have no interest in the transaction.
- (11) Borrow funds, subject to the express limitations that the Authority Enterprise shall not incur obligations in excess of its ability to pay as required and the Nation shall not be liable for the debts or obligations of the Authority Enterprise.

- (12) Designate and approve all depositories used for the deposit of funds of the Authority Enterprise.
- (13) Elect officers, appoint agents, and select independent auditors, independent legal counsel, management companies and other consultants as may be needed from time to time by the Authority Enterprise, define their duties and fix their compensation.
- (14) Approve annual Authority Enterprise budgets prior to the commencement of each fiscal year.
- (15) Make a formal report regarding the Authority's Enterprise's operations to the Chairperson of the Nation and the Legislative Council within 45 days of the close of the Authority's Enterprise's fiscal year, including a summary of the budget which the Management Board has approved for the succeeding fiscal year.
- (16) Recommend amendment or revision of this Charter to the Legislative Council whenever deemed appropriate to improve the operation and management of the Authority Enterprise.
- (17) Have and exercise all other powers necessary, proper, advisable or incidental to effect any or all of the powers and responsibilities of the Authority Enterprise.

SECTION 6: OPERATIONS

(a) Management Personnel

- (1) **Chief Executive Officer.** The Management Board shall engage a Chief Executive Officer (CEO). The CEO shall have primary responsibility for managing the Authority Enterprise and its gaming activities and shall be knowledgeable in such operations. The CEO shall obtain a gaming manager's license pursuant to the Gaming Ordinance prior to undertaking management responsibilities under this Charter. The CEO shall have the following duties and responsibilities:
 - (A) Execute the general policies formulated by the Management Board and organize the operation of the Authority Enterprise.
 - (B) Prepare operating plans and annual budgets, recommend policies, and propose changes to improve Authority Enterprise operations.
 - (C) Have full authority and control over all employees of the Authority Enterprise, with the exception of authority reserved to the Management Board by this Charter, and be responsible for the performance of staff in respect to all matters including compliance with policies and procedures approved by the Management Board, conformance to budgets, employee relations, advancement and training.
 - (D) Render regular reports to the Management Board.

- (E) Comply with the requirements for conducting gaming activities set out in the Gaming Ordinance.
- (F) Perform such other duties as assigned.

(2) **Internal Auditor.** **The Enterprise shall have a separate internal audit department (which department may be comprised of employees of the Enterprise, independent contractors of the Enterprise, or a combination of both) the primary function of which is performing internal audit work and which is independent of the departments subject to audit.** The Management Board shall employ ~~select~~ a qualified certified public accountant to **lead the internal audit department and to serve as the Authority's Enterprise's Internal Auditor.** The Internal Auditor shall ~~obtain~~ **be licensed as a gaming employee's license pursuant to employee or a supplier of Gaming Services, as appropriate, under the Gaming Ordinance prior to commencing** employment. The Internal Auditor ~~shall be an employee of the Authority,~~ shall report directly to the Management Board and shall be subject to the exclusive direction and supervision of the Board. The Internal Auditor shall have the following duties:

(A) **Manage the internal audit department.**

(B) Develop and implement a system of reviews to assess: the accuracy of Authority **Enterprise** financial records, statements and reports; compliance with accounting and operational policies; and the adequacy, effectiveness and reliability of accounting systems, controls and procedures.

~~(B)~~**(C)** Make regular reports to the Management Board outlining the results of such reviews and any deficiencies found, make suggestions for improvements in the Authority's **Enterprise's** accounting and operational policies and procedures, and suggest appropriate corrective action when warranted.

~~(C)~~**(D)** Perform such other duties as assigned.

(3) **Chief Financial Officer.** The CEO shall employ a qualified certified public accountant to serve as the Authority's **Enterprise's** Chief Financial Officer. The Chief Financial Officer shall obtain a gaming employee's license pursuant to the Gaming Ordinance prior to employment. The Chief Financial Officer shall report directly to the CEO and shall be subject to the CEO's direction and supervision. The Chief Financial Officer shall have the following duties:

(A) Supervise the Authority's **Enterprise's** accounting practices including maintenance of fiscal records, preparation of financial reports and projections and supervision of accounting staff.

- (B) Develop and implement accounting policies, systems, controls and procedures to assure compliance with the Gaming Ordinance and protection of the Authority's Enterprise's assets.
 - (C) Supervise the Authority's Enterprise's gaming finance function, including design and implementation of policies, controls, and procedures and supervise gaming finance staff.
 - (D) Perform such other duties as assigned.
- (4) **Facility Supervisor.** The CEO may hire a Facility Supervisor for any of the Authority's Enterprise's gaming facilities. A Facility Supervisor shall obtain a gaming employee's license pursuant to the Gaming Ordinance prior to employment. A Facility Supervisor shall report directly to the CEO and shall be subject to the CEO's direction and supervision. A Facility Supervisor shall have primary management responsibility for the gaming facility to which s/he is assigned.
- (b) **Notice of Intent to Begin Operation.** The Management Board shall notify the Chairperson of the Nation in writing that the Authority Enterprise is ready to conduct gaming activities. The notice shall include a statement that the Authority Enterprise has named a Chief Executive Officer, Chief Financial Officer and Internal Auditor and is in a position to comply with all the requirements of the Gaming Ordinance.
 - (c) **Fiscal year.** The fiscal year of the Authority Enterprise shall start October 1 and end September 30 of each year. The Management Board may change the Authority Enterprise fiscal year upon notification to the Chairperson of the Nation and Legislative Council.
 - (d) **Contracts.** Except as otherwise provided in this Charter, the Management Board may authorize any officer(s), or any agent(s), to enter into any contract or execute and deliver any instrument in the name and on behalf of the Authority Enterprise, and such authority may be general or confined to specific instances.
 - (e) **Checks; drafts; etc.** All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority Enterprise shall be signed by such officer(s), agent(s), or employee(s) of the Authority Enterprise and in such manner as shall from time to time be determined by resolution of the Management Board.
 - (f) **Deposits.** All funds of the Authority Enterprise, except cash on hand, shall be deposited from time to time to the credit of the Authority Enterprise in such bank or banks as the Management Board may select.
 - (g) **Accounting.** An appropriate accounting system shall be established and installed in conformity with accounting principles generally accepted in the gaming industry. The accounting system shall insure the availability of information as may be necessary to comply with all applicable operational requirements of the Authority Enterprise and the Gaming Ordinance.
 - (h) **Records; inspection; audits.** The books and records of the Authority Enterprise, including current financial and operating statements, shall be kept on

file in the office of the Authority Enterprise and shall be available for inspection at all reasonable times by Directors of the Management Board, officers of the Authority Enterprise, employees of the Gaming Office, the Chairperson of the Nation, Chairperson of the Legislative Council or any other employee or official of the Nation designated by either of such Chairpersons in writing. The accounts and records of the Authority Enterprise shall be audited by an independent certified public accountant at the close of each fiscal year. A copy of the final audit shall be provided to the Chairperson of the Nation and the Legislative Council.

- (i) **Budgets.** A budget of the Authority Enterprise for each year shall be prepared for approval by the Management Board at its fourth quarter meeting. The budget shall include a profit and loss projection, a cash-flow projection and a budget for capital expenditures, and shall be approved by the Management Board not later than September 1 of each year. Pending approval of the budget, expenditures may be made for normal operations at the same rate as the previous year. The CEO shall be responsible for compliance with the budget and will provide the Management Board with a comparison of actual results against the budget for each quarter. Amendments to the budget may be made with the approval of the Management Board.
- (j) **Insurance.** The Authority Enterprise shall maintain appropriate liability and property insurance for its operations and facilities sufficient to protect the interests of the Authority Enterprise and the Nation. Such policies shall designate the Nation as an additional named insured. Policies of liability insurance shall include an endorsement that the insurer shall not assert the Authority's Enterprise's immunity from suit as a defense to any claim or portion of a claim for personal injury and property damage that is for \$2,000,000 or less and within the coverage of said policy. The Authority Enterprise shall maintain workers' compensation insurance, unemployment compensation insurance, and such other forms of insurance for the benefit and protection of its employees as the Management Board deems appropriate and in the best interests of the Authority Enterprise and the Nation.
- (k) **Bonding.** All officers, agents or employees directly responsible for funds or property shall be bonded at Authority Enterprise expense or the Authority Enterprise shall maintain employee theft and dishonesty insurance covering such officers, agents or employees.
- (l) **Indemnification.** The Authority Enterprise shall indemnify any officer or employee of the Authority Enterprise or any Director of the Management Board or former officer, employee or Director, for reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any civil action, suit or proceeding in which s/he is made a party by reason of being, or having been such officer, employee or Director except in relation to matters as to which s/he shall be adjudged in such action, suit or proceeding to be liable for gross negligence, wilful misconduct in the performance of duty, or otherwise acting beyond the scope of his or her duties. The Authority Enterprise shall also indemnify any such officer, employee or Director for reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Management Board, other than Directors involved in the matter or controversy (whether or not a quorum exists), that it is in the best interest of the Authority Enterprise and the Nation that such settlement be made and that such

officer, employee or Director was not guilty of gross negligence, wilful misconduct or other conduct beyond the scope of his or her duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee or Director may have.

- (m) **Indian Preference in Employment and Contracting.** The Authority Enterprise shall comply with all provisions of the Employment Rights Ordinance, including the following requirements:
- (1) The Authority Enterprise shall give preference to qualified Indians, with first preference to local Indians, in all hiring, promotion, training, lay-offs and all other aspects of employment; and
 - (2) The Authority Enterprise, when awarding contracts in an amount of \$5,000 or more for supplies, services, labor and materials in which the majority of work will occur within the Nation, shall give preference in contracting to qualified entities certified by the Tohono O'odham Employment Rights Commission as 51% or more Indian owned and controlled, with a first preference to qualified entities that are 51% or more owned and controlled by local Indians.

SECTION 7: NATION'S INVESTMENT; CAPITAL EXPENDITURES; DISTRIBUTIONS

- (a) **Investment by the Nation.** Upon the receipt by the Chairperson of the Nation of the notice specified in section 6(b) of this Charter, and upon a determination by the Chairperson that the Authority Enterprise is in compliance with the Gaming Ordinance and otherwise capable of conducting gaming activities, the Nation will transfer to the Authority Enterprise at book value all of the assets and liabilities of the Nation's gaming operation known as Papago Bingo. The amount by which such assets exceed liabilities shall be designated as an investment in the Authority Enterprise by the Nation, and shall be shown on the Authority's Enterprise's accounting records as such.
- (b) **Operating Reserve.** The Authority Enterprise is authorized to create an operating reserve to pay for operating expenses of up to \$500,000 which may be increased in amount upon prior approval of the Legislative Council.
- (c) **Capital Expenditures.** Subject to prior approval of the Legislative Council, the Authority Enterprise is authorized to create a sinking fund for capital expenditures such as remodeling or additions, equipment acquisitions, expansion and new construction.
- (d) **Payment of Regulatory Costs and Tribal Contributions.** The Authority Enterprise shall timely pay to the Arizona Department of Gaming the Nation's regulatory costs and tribal contributions required under Section 12 of the Compact. The Authority Enterprise shall timely pay the contribution required under Section 12(d) of the Compact in accordance with the directives of the Legislative Council. The Authority Enterprise shall comply with all accounting, auditing and record keeping requirements and obligations of the Nation under the

Compact relating to the payment of regulatory costs and tribal contributions as required under Section 12 of the Compact.

- (e) **Distributions.** The ~~Authority~~ Enterprise shall pay to the Nation as a distribution all available cash at the end of each month of operation. Distribution shall take place by the fifth banking day of the succeeding month.
- (f) **Definitions.** The following definitions are applicable to this section:
 - (1) The term “assets” means personal property, cash, accounts receivable and leasehold interests in real property;
 - (2) The term “available cash” means all cash held by the ~~Authority~~ Enterprise in bank accounts and cash equivalents, including certificates of deposit, treasury bills and other short-term investments, but excluding cash on hand, cash required to pay accrued and accruing liabilities, and any operating reserves and sinking funds.
 - (3) The term “cash on hand” means change funds, coin inventories, and other cash banks, including funds held for jackpot payouts and in reserve banks.
 - (4) The term “liabilities” means current liabilities, including current accounts payable and payroll, contingent liabilities and the regulatory costs and tribal contribution payment obligation under Section 12 of the Compact.

SECTION 8: IMMUNITY FROM SUIT

- (a) **Authority Enterprise Immune from Suit.** The ~~Authority~~ Enterprise is an entity of the Nation and is established for the benefit of the Nation. As such, it has the same immunity from suit as the Nation possesses. Notwithstanding the fact that the ~~Authority~~ Enterprise is immune from suit, the ~~Authority~~ Enterprise is hereby expressly granted the right to sue in its own name, and a limited right to be sued in its own name as more fully set out below. The ~~Authority~~ Enterprise is not immune from suits, actions or proceedings initiated by the Nation or its regulatory agencies and departments. Nothing in this section 8 or in this Charter shall be construed as a waiver of or limitation on the sovereign immunity of the Nation.
- (b) **Limited Waiver of Immunity.** The ~~Authority~~ Enterprise may be sued only in the Courts of the Nation, and only in the following limited circumstances:
 - (1) **Claims within Insurance Coverage.** With respect to claims against the ~~Authority~~ Enterprise for any personal injury or property damage, the amount and nature of which are within the express coverage of a policy of insurance procured and maintained pursuant to section 6(j) of this Charter, as acknowledged by the insurer under such policy, the ~~Authority's~~ Enterprise's immunity is waived to the lesser of the extent of such coverage or \$2,000,000, provided that any judgment, order or award may only be satisfied pursuant to:

- (A) the express provisions of the policy(ies) of insurance which are in effect at the time of each such judgment, order or award; and
- (B) an action, if necessary, brought by the prevailing party against the insurer under such policy.

(2) **Contract Claims.**

(A) With respect to claims against the ~~Authority~~ Enterprise (i) arising out of any written contract to which the ~~Authority~~ Enterprise is a party, and (ii) the amount and nature of which are not within the express coverage of a policy of insurance procured and maintained pursuant to section 6(j) of this Charter, as acknowledged by the insurer under such policy, the ~~Authority's~~ Enterprise's immunity is waived to the lesser of the amount of the ~~Authority's~~ Enterprise's payment obligation under the contract or \$500,000.

(B) The ~~Authority's~~ Enterprise's immunity from execution on any judgment, award or order is hereby waived only with respect to a pledge of, or security interest in, the ~~Authority's~~ Enterprise's personal property, cash, accounts receivable and other assets (exclusive of any leasehold interests) granted by the ~~Authority~~ Enterprise as collateral for any payment obligations under such contract, provided that:

- (i) Execution on any such collateral shall be limited to that amount which, when added to amounts received from other sources in satisfaction of such judgment, award or order, does not exceed \$500,000.
- (ii) Execution on any such collateral shall be solely by judicial process pursuant to a judgment, order or award of a court of competent jurisdiction.
- (iii) For purposes of applying the provisions of this subsection (b)(2), all contracts entered into with the same party on the same subject matter shall be deemed to be one contract.

(3) **Claims Tried to Court.** Any claims for which the ~~Authority's~~ Enterprise's immunity is waived shall be tried to the court. Nothing herein shall be construed as a consent to trial by jury.

(4) **Suits Brought in ~~Authority's~~ Enterprise's Name.** All claims arising out of ~~Authority~~ Enterprise operations shall be brought against the ~~Authority~~ Enterprise directly and in the name of the ~~Authority~~ Enterprise. ~~Directors, officers, agents and employees of the~~ Enterprise, when acting within the scope of their authority, are immune from suit.

(c) **Section Strictly Construed.** Except as otherwise expressly provided in this section 8, nothing contained in this Charter shall be interpreted or construed as:

- (1) A waiver of the sovereign immunity of the Authority Enterprise beyond the limits set forth in this section 8;
- (2) A waiver of sovereign immunity of the Authority Enterprise from the imposition in any judgment, order or award of interest prior or subsequent to judgment, attorney fees, court costs, civil penalties, or punitive, double, treble, incidental or consequential damages;
- (3) A waiver of the sovereign immunity of the Authority Enterprise from a levy on any judgment, or a lien, attachment, execution or other judicial or non-judicial process upon the assets of the Authority Enterprise; or
- (4) Creating any liability for the Nation with respect to any claims or other obligations asserted against the Authority Enterprise or arising out of its operations.

The Legislative Council retains the power to prospectively modify this limited waiver of the Authority's Enterprise's immunity either generally or with respect to particular circumstances.

SECTION 9: DISSOLUTION AND LIQUIDATION

- (a) **Dissolution by Legislative Council.** The Authority Enterprise can only be dissolved by action of the Legislative Council and pursuant to a plan of dissolution approved by the Legislative Council. Dissolution proceedings shall be initiated by the adoption of a Resolution by the Legislative Council expressing the Council's intent to dissolve the Authority. ~~The Authority~~ Enterprise. ~~The~~ Enterprise shall continue in existence during dissolution proceedings to permit the winding up of the Authority's Enterprise's affairs.
- (b) **Powers and Duties of the Management Board.**
 - (1) Within 60 days after the date the Legislative Council adopts the Resolution prescribed in subsection (a), or such other period of time as may be fixed in such Resolution, the Management Board shall submit a plan of dissolution for review and approval by the Legislative Council. The plan of dissolution shall include an anticipated time frame for execution of the plan and provide the following:
 - (A) the form and procedure for giving notice of the intent to dissolve to every known creditor of the Authority Enterprise;
 - (B) an identification of the Authority's Enterprise's cash and accounts receivable and steps for collecting such assets;
 - (C) an inventory of all the Authority's Enterprise's personal property and other assets identifying which, if any, of the Authority's Enterprise's personal property is to be distributed to the Nation in kind, and the methods for disposition of all other assets;

- (D) an identification of the Authority's Enterprise's liabilities and obligations and steps for satisfying or discharging such debts and obligations;
 - (E) an identification of uncollected or unasserted claims and liabilities of the Authority Enterprise and steps for making adequate provision for such claims;
 - (F) steps for identifying and distributing the remainder of the Authority's Enterprise's assets, either in cash or in kind, to the Nation after all claims have been satisfied or otherwise provided for; and
 - (G) any other acts required to liquidate the Authority's Enterprise's assets and wind up its business.
- (2) The Authority Enterprise, during dissolution proceedings, shall have only those powers and duties which are authorized in an approved plan of dissolution and are necessary to wind up the Authority's Enterprise's business.
- (c) **Notice of Dissolution.** The Management Board shall notify the Chairpersons of the Nation and the Legislative Council in writing when, in accordance with an approved plan of dissolution, all debts, liabilities and obligations of the Authority Enterprise have been paid and discharged, or adequate provision has been made therefor, and all the remaining property and assets of the Authority Enterprise have been distributed.
- (d) **Dissolution.** The Authority Enterprise shall be dissolved upon formal acceptance of the notice of dissolution by the Legislative Council, and this Charter shall be repealed.

----- COMPARISON OF FOOTERS -----

-FOOTER 1-
| (Revised May ~~2003~~ 2004)

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between -
original document : E:\WPData\DJQ\7000 TOGA\01 General\Charter\TOGA.Charter May 2003.wpd
and revised document: E:\WPData\DJQ\7000 TOGA\01 General\Charter\TOGA.Charter CPA August 2004.wpd

CompareRite found 144 change(s) in the text
CompareRite found 1 change(s) in the notes

Deletions appear as Strikethrough text
Additions appear as Bold+Dbl Underline text

Exhibit B

TOHONO O'ODHAM GAMING ENTERPRISE CHARTER

SECTION 1: ESTABLISHMENT AND POWERS

- (a) **Establishment.** The Tohono O'odham Gaming Enterprise is hereby established as an enterprise of the Tohono O'odham Nation pursuant to Article VI, Section 1(e) of the Nation's Constitution. The Enterprise shall have and may exercise all those powers set forth herein, effective on the date all Directors of the Management Board are appointed by the Chairperson of the Nation and approved by the Legislative Council.
- (b) **Powers.** The Enterprise is empowered and responsible to:
 - (1) Conduct gaming activities in gaming facilities in accordance with the terms and conditions of the Gaming Ordinance; and
 - (2) Take all actions necessary or advisable to carry out the foregoing functions consistent with the requirements of the Gaming Ordinance.

SECTION 2: DEFINITIONS

- (a) The term "Enterprise" means the Tohono O'odham Gaming Enterprise established under this Charter.
- (b) The term "Chairperson of the Nation" means the Chairperson of the Nation whose office is established under Articles IV and VII of the Constitution.
- (c) The term "Constitution" means the Constitution of the Nation adopted by the O'odham people and approved by the Secretary of Interior on March 6, 1986 pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. § 476).
- (d) The term "District" means one of the eleven subdivisions of the Nation's government established under the Constitution.
- (e) The term "Employment Rights Ordinance" means the Papago Employment Rights Ordinance, Ord. No 01-85.
- (f) The term "Gaming Office" means the Tohono O'odham Gaming Office established under the Gaming Ordinance.
- (g) The term "Gaming Ordinance" means the Ordinance for the Regulation of Gaming Activities within the Tohono O'odham Nation, adopted by the Legislative Council pursuant to Res. No. 93-296.
- (h) The terms "gaming activity", "gaming facility" and "gaming operation" shall have the same meaning assigned to such terms in the Gaming Ordinance.
- (i) The term "Legislative Council" means the Nation's Legislative Council established under Articles IV and VI of the Constitution.

- (j) The term “Management Board” means the Board of Directors established under section 5 of this Charter.
- (k) The term “Nation” means the Tohono O’odham Nation, a federally recognized Indian tribe, organized under the Constitution.

SECTION 3: PLACE OF BUSINESS

The principal place of business of the Enterprise shall be at such place within the territorial jurisdiction of the Nation as the Management Board may designate. The Enterprise shall have such other offices as the Management Board may determine.

SECTION 4: PURPOSES

The Enterprise is organized as an exercise by the Nation of rights of self-government under the Constitution and as one means to achieve economic self-sufficiency. The Enterprise has the following specific purposes:

- (a) To establish an independent, financially self-sustaining and successful business enterprise;
- (b) To offer gaming activities within the Nation which are conducted pursuant to the highest standards of honesty and integrity, in facilities designed to assure the safety and comfort of gaming activity patrons;
- (c) To promote economic development through training and employment opportunities for members of the Nation; and
- (d) To produce the maximum economic return to the Nation consistent with the fair and reasonable expectations of gaming activity patrons.

SECTION 5: MANAGEMENT BOARD

(a) Membership

- (1) **Composition.** The Management Board shall consist of seven Directors.
- (2) **Appointment.** The Directors shall be appointed by the Chairperson of the Nation with the approval of the Legislative Council. No employee of the Enterprise, the Gaming Office, or the Bureau of Indian Affairs, or elected official of the Nation or any District shall be eligible to serve as a Director.
- (3) **Qualifications.** Directors shall have the following qualifications:
 - (A) Not less than four of the Directors shall be members of the Nation;
 - (B) Each Director shall have sufficient education and business experience to make sound judgments concerning the operation of the Enterprise; and

(C) Each Director must obtain a gaming facility operator's license pursuant to the Gaming Ordinance prior to approval of the Director's appointment by the Legislative Council.

(4) **Term.** Directors shall have staggered terms. Of the initial Directors, two Directors shall serve a term of one year, two Directors shall serve a term of two years, and three Directors shall serve a term of three years. Thereafter, all terms shall be for three years. Directors shall be eligible for reappointment upon expiration of their terms of office. Each Director shall hold office until his or her successor has been appointed and qualified.

(5) **Removal, Resignation and Vacancies.**

(A) **Removal.** A Director may be removed by the Chairperson of the Nation if the Chairperson, in his or her sole discretion, determines that the best interests of the Nation shall be served by such removal.

(B) **Resignation.** A Director may resign at any time by giving written notice to the Chairperson of the Board and to the Chairperson of the Nation. Resignations shall become effective at the time specified in said notice, or if no time is specified, on the date of receipt. Any Director who fails to attend three consecutive properly called and noticed meetings of the Management Board or who fails to attend two-thirds (2/3) of all Management Board meetings properly noticed in any fiscal year shall, unless excused from attendance for a justifiable cause, be considered to have resigned his/her directorship. The Chairperson of the Board shall promptly notify the Chairperson of the Nation concerning any such resignation.

(C) **Vacancies.** Any vacancy in the Management Board because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for appointment of Directors.

(b) **Officers; Powers and Duties.**

(1) **Chairperson.** The Chairperson of the Management Board shall be a Director and shall preside at all meetings of the Board at which s/he is present. The Chairperson and the Secretary of the Board shall sign any instruments which have been authorized by the Management Board to be executed on behalf of the Enterprise, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or this Charter to some other officer or agent of the Enterprise, or shall be required by law to be otherwise signed or executed. The Chairperson shall perform all duties incident to the office of Chairperson of the Board and such other duties as may be prescribed by the Management Board from time to time.

(2) **Vice Chairperson.** The Vice Chairperson of the Management Board shall be a Director and shall, in the absence of the Chairperson or in the event of his or her inability or refusal to act, perform the duties of the

Chairperson, and when so acting shall have all the powers and be subject to all the restrictions which pertain to the Chairperson.

- (3) **Secretary.** The Secretary of the Management Board may, but need not be, a Director and shall be responsible for:
 - (A) Keeping the minutes of the meetings of the Management Board in books and/or tapes provided for that purpose;
 - (B) Seeing that all notices are duly given in accordance with the provisions of this Charter;
 - (C) The safekeeping of the books and records of the Enterprise;
 - (D) Keeping on file at all times a complete copy of this Charter and all amendments thereto; and
 - (E) In general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Management Board.
- (4) **Other Officers.** The Management Board may appoint such other officers and agents as it deems necessary. Such officers shall perform such duties as from time to time may be assigned to them by the Management Board.
- (5) **Election; Term of Office.** The officers shall be chosen annually by the Management Board at its annual meeting, or as soon after such annual meeting as newly appointed Directors shall have been approved by the Legislative Council. Each officer shall hold office until his or her successor is chosen and approved, or until his or her death, or until s/he shall have resigned, or shall have been removed in the manner provided herein.
- (6) **Removal; Resignation; Vacancies.**
 - (A) **Removal.** Any officer or agent elected or appointed by the Management Board may be removed by the Board at any time, with or without cause.
 - (B) **Resignation.** Any officer may resign at any time by giving written notice to the Chairperson of the Board. Such resignation shall take effect at the time specified therein, or if no time is specified, then on the date of receipt.
 - (C) **Vacancies.** Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein.

(c) **Meetings of the Management Board**

- (1) **Regular, Annual and Special Meetings.** Regular meetings of the Management Board shall be held at least once during each fiscal quarter. The Management Board shall designate the month, week and day of the

annual meeting which shall be recognized thereafter. The annual meeting shall be considered one of the Management Board's regular quarterly meetings. Special meetings of the Management Board may be held upon notice given by the Chairperson of the Board or by three Directors.

- (2) **Notice.** Notice of meetings stating the time, date, place and agenda shall be given in writing to each Director and officer of the Management Board by mailing such notice not less than ten days nor more than thirty days prior to the meeting, excluding the day of the meeting, provided that special meetings may be called upon no less than five days notice. Notice may be waived in writing by a Director entitled to such notice; attendance of a Director at a Management Board meeting shall constitute a waiver of notice.
- (3) **Quorum.** The presence at any meeting of four Directors shall constitute a quorum of the Management Board for transaction of any business. The act of a majority of the Directors present and voting at a meeting at which a quorum is present shall be the act of the Management Board.
- (4) **Rules.** The Management Board may adopt such rules as it may determine necessary for the orderly conduct of its business.
- (5) **Minutes.** The Secretary shall make arrangements for the recording of the minutes of the Management Board's meetings. Copies of the minutes of each meeting shall be kept on file in the office of the Enterprise and shall be available for inspection at all reasonable times by Directors of the Management Board, officers of the Enterprise, employees of the Gaming Office, the Chairperson of the Nation, the Chairperson of the Legislative Council, or any employee or official of the Nation designated by either of such Chairpersons in writing.
- (6) **Expenses.** Directors shall be reimbursed for reasonable expenses incurred in attending meetings and performing duties incident to their positions. The Management Board may set a reasonable stipend to be paid to Directors for attendance at meetings of the Board and performing duties incident to their positions.

(d) **Powers and Duties**

The Management Board shall exercise all powers and responsibilities consistent with the best interests of the Nation and within the limits of responsible business judgment. Subject to the foregoing, the provisions of section 1 of this Charter and other applicable law, the Management Board shall have the authority to exercise the following powers and duties:

- (1) Exercise general authority and responsibility for the management and operation of the Enterprise.
- (2) Direct the operation of the Enterprise and exercise the powers set forth below without previous authorization or subsequent approval (except as otherwise provided).

- (3) Manage and maintain all existing gaming facilities and be responsible for the planning, construction and management of all new or additional gaming facilities.
- (4) Establish and maintain effective operating and fiscal policies for the Enterprise.
- (5) Select, supervise and direct the Chief Executive Officer and Internal Auditor and supervise and direct the manager of the Enterprise's Director of Surveillance on matters of policy, purpose, responsibility, authority, and integrity of casino management.
- (6) Utilize, improve, maintain, operate and manage, in the ordinary course of business, all interests in real property held by the Enterprise, including negotiation of leases or subleases of real property subject to approval of the Legislative Council; provided however, that nothing in this Charter shall be construed as authorizing the Enterprise to mortgage or encumber trust or restricted real property of the Nation without the prior consent of the Legislative Council.
- (7) Acquire, hold, own, manage, operate, exchange, deal in and dispose of all Enterprise personal property in the ordinary course of business.
- (8) Subject to the terms of section 8 of this Charter, pledge or grant security interests in the Enterprise's personal property, cash, accounts receivable and other assets (exclusive of any leasehold interests) as collateral for any contractual obligation.
- (9) Acquire, hold, own, use, license, and lease any interest in and to inventions, improvements, patents, licenses, formulas, privileges, processes, copyrights, trade names, trademarks and all applications therefor, provided that title of all such acquisitions shall be taken in the name of the Nation and such interests may be sold only with the prior consent of the Legislative Council.
- (10) Enter into, make, perform and carry out or cancel and rescind contracts for any lawful purpose pertaining to the Enterprise's business; provided, however that no contract or other transaction between the Enterprise and any one of the Directors, officers or employees of the Enterprise or an elected officer or employee of the Nation or any District, or between the Enterprise and any corporation, partnership, firm or other legal entity in which one or more of the foregoing persons has a financial interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of such persons is fully disclosed to the Management Board and the proposed contract or transaction is approved, ratified or confirmed by the affirmative vote of at least a majority of the entire Management Board who have no interest in the transaction.
- (11) Borrow funds, subject to the express limitations that the Enterprise shall not incur obligations in excess of its ability to pay as required and the Nation shall not be liable for the debts or obligations of the Enterprise.

- (12) Designate and approve all depositories used for the deposit of funds of the Enterprise.
- (13) Elect officers, appoint agents, and select independent auditors, independent legal counsel, management companies and other consultants as may be needed from time to time by the Enterprise, define their duties and fix their compensation.
- (14) Approve annual Enterprise budgets prior to the commencement of each fiscal year.
- (15) Make a formal report regarding the Enterprise's operations to the Chairperson of the Nation and the Legislative Council within 45 days of the close of the Enterprise's fiscal year, including a summary of the budget which the Management Board has approved for the succeeding fiscal year.
- (16) Recommend amendment or revision of this Charter to the Legislative Council whenever deemed appropriate to improve the operation and management of the Enterprise.
- (17) Have and exercise all other powers necessary, proper, advisable or incidental to effect any or all of the powers and responsibilities of the Enterprise.

SECTION 6: OPERATIONS

(a) Management Personnel

- (1) **Chief Executive Officer.** The Management Board shall engage a Chief Executive Officer (CEO). The CEO shall have primary responsibility for managing the Enterprise and its gaming activities and shall be knowledgeable in such operations. The CEO shall obtain a gaming manager's license pursuant to the Gaming Ordinance prior to undertaking management responsibilities under this Charter. The CEO shall have the following duties and responsibilities:
 - (A) Execute the general policies formulated by the Management Board and organize the operation of the Enterprise.
 - (B) Prepare operating plans and annual budgets, recommend policies, and propose changes to improve Enterprise operations.
 - (C) Have full authority and control over all employees of the Enterprise, with the exception of authority reserved to the Management Board by this Charter, and be responsible for the performance of staff in respect to all matters including compliance with policies and procedures approved by the Management Board, conformance to budgets, employee relations, advancement and training.
 - (D) Render regular reports to the Management Board.

- (E) Comply with the requirements for conducting gaming activities set out in the Gaming Ordinance.
 - (F) Perform such other duties as assigned.
- (2) **Internal Auditor.** The Enterprise shall have a separate internal audit department (which department may be comprised of employees of the Enterprise, independent contractors of the Enterprise, or a combination of both) the primary function of which is performing internal audit work and which is independent of the departments subject to audit. The Management Board shall select a qualified certified public accountant to lead the internal audit department and to serve as the Enterprise's Internal Auditor. The Internal Auditor shall be licensed as a gaming employee or a supplier of Gaming Services, as appropriate, under the Gaming Ordinance prior to commencing employment. The Internal Auditor shall report directly to the Management Board and shall be subject to the exclusive direction and supervision of the Board. The Internal Auditor shall have the following duties:
- (A) Manage the internal audit department.
 - (B) Develop and implement a system of reviews to assess: the accuracy of Enterprise financial records, statements and reports; compliance with accounting and operational policies; and the adequacy, effectiveness and reliability of accounting systems, controls and procedures.
 - (C) Make regular reports to the Management Board outlining the results of such reviews and any deficiencies found, make suggestions for improvements in the Enterprise's accounting and operational policies and procedures, and suggest appropriate corrective action when warranted.
 - (D) Perform such other duties as assigned.
- (3) **Chief Financial Officer.** The CEO shall employ a qualified certified public accountant to serve as the Enterprise's Chief Financial Officer. The Chief Financial Officer shall obtain a gaming employee's license pursuant to the Gaming Ordinance prior to employment. The Chief Financial Officer shall report directly to the CEO and shall be subject to the CEO's direction and supervision. The Chief Financial Officer shall have the following duties:
- (A) Supervise the Enterprise's accounting practices including maintenance of fiscal records, preparation of financial reports and projections and supervision of accounting staff.
 - (B) Develop and implement accounting policies, systems, controls and procedures to assure compliance with the Gaming Ordinance and protection of the Enterprise's assets.

- (C) Supervise the Enterprise's gaming finance function, including design and implementation of policies, controls, and procedures and supervise gaming finance staff.
 - (D) Perform such other duties as assigned.
- (4) **Facility Supervisor.** The CEO may hire a Facility Supervisor for any of the Enterprise's gaming facilities. A Facility Supervisor shall obtain a gaming employee's license pursuant to the Gaming Ordinance prior to employment. A Facility Supervisor shall report directly to the CEO and shall be subject to the CEO's direction and supervision. A Facility Supervisor shall have primary management responsibility for the gaming facility to which s/he is assigned.
- (b) **Notice of Intent to Begin Operation.** The Management Board shall notify the Chairperson of the Nation in writing that the Enterprise is ready to conduct gaming activities. The notice shall include a statement that the Enterprise has named a Chief Executive Officer, Chief Financial Officer and Internal Auditor and is in a position to comply with all the requirements of the Gaming Ordinance.
 - (c) **Fiscal year.** The fiscal year of the Enterprise shall start October 1 and end September 30 of each year. The Management Board may change the Enterprise fiscal year upon notification to the Chairperson of the Nation and Legislative Council.
 - (d) **Contracts.** Except as otherwise provided in this Charter, the Management Board may authorize any officer(s), or any agent(s), to enter into any contract or execute and deliver any instrument in the name and on behalf of the Enterprise, and such authority may be general or confined to specific instances.
 - (e) **Checks; drafts; etc.** All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Enterprise shall be signed by such officer(s), agent(s), or employee(s) of the Enterprise and in such manner as shall from time to time be determined by resolution of the Management Board.
 - (f) **Deposits.** All funds of the Enterprise, except cash on hand, shall be deposited from time to time to the credit of the Enterprise in such bank or banks as the Management Board may select.
 - (g) **Accounting.** An appropriate accounting system shall be established and installed in conformity with accounting principles generally accepted in the gaming industry. The accounting system shall insure the availability of information as may be necessary to comply with all applicable operational requirements of the Enterprise and the Gaming Ordinance.
 - (h) **Records; inspection; audits.** The books and records of the Enterprise, including current financial and operating statements, shall be kept on file in the office of the Enterprise and shall be available for inspection at all reasonable times by Directors of the Management Board, officers of the Enterprise, employees of the Gaming Office, the Chairperson of the Nation, Chairperson of the Legislative Council or any other employee or official of the Nation designated by either of such Chairpersons in writing. The accounts and records of the Enterprise shall be

audited by an independent certified public accountant at the close of each fiscal year. A copy of the final audit shall be provided to the Chairperson of the Nation and the Legislative Council.

- (i) **Budgets.** A budget of the Enterprise for each year shall be prepared for approval by the Management Board at its fourth quarter meeting. The budget shall include a profit and loss projection, a cash-flow projection and a budget for capital expenditures, and shall be approved by the Management Board not later than September 1 of each year. Pending approval of the budget, expenditures may be made for normal operations at the same rate as the previous year. The CEO shall be responsible for compliance with the budget and will provide the Management Board with a comparison of actual results against the budget for each quarter. Amendments to the budget may be made with the approval of the Management Board.
- (j) **Insurance.** The Enterprise shall maintain appropriate liability and property insurance for its operations and facilities sufficient to protect the interests of the Enterprise and the Nation. Such policies shall designate the Nation as an additional named insured. Policies of liability insurance shall include an endorsement that the insurer shall not assert the Enterprise's immunity from suit as a defense to any claim or portion of a claim for personal injury and property damage that is for \$2,000,000 or less and within the coverage of said policy. The Enterprise shall maintain workers' compensation insurance, unemployment compensation insurance, and such other forms of insurance for the benefit and protection of its employees as the Management Board deems appropriate and in the best interests of the Enterprise and the Nation.
- (k) **Bonding.** All officers, agents or employees directly responsible for funds or property shall be bonded at Enterprise expense or the Enterprise shall maintain employee theft and dishonesty insurance covering such officers, agents or employees.
- (l) **Indemnification.** The Enterprise shall indemnify any officer or employee of the Enterprise or any Director of the Management Board or former officer, employee or Director, for reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any civil action, suit or proceeding in which s/he is made a party by reason of being, or having been such officer, employee or Director except in relation to matters as to which s/he shall be adjudged in such action, suit or proceeding to be liable for gross negligence, wilful misconduct in the performance of duty, or otherwise acting beyond the scope of his or her duties. The Enterprise shall also indemnify any such officer, employee or Director for reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Management Board, other than Directors involved in the matter or controversy (whether or not a quorum exists), that it is in the best interest of the Enterprise and the Nation that such settlement be made and that such officer, employee or Director was not guilty of gross negligence, wilful misconduct or other conduct beyond the scope of his or her duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee or Director may have.
- (m) **Indian Preference in Employment and Contracting.** The Enterprise shall comply with all provisions of the Employment Rights Ordinance, including the following requirements:

- (1) The Enterprise shall give preference to qualified Indians, with first preference to local Indians, in all hiring, promotion, training, lay-offs and all other aspects of employment; and
- (2) The Enterprise, when awarding contracts in an amount of \$5,000 or more for supplies, services, labor and materials in which the majority of work will occur within the Nation, shall give preference in contracting to qualified entities certified by the Tohono O'odham Employment Rights Commission as 51% or more Indian owned and controlled, with a first preference to qualified entities that are 51% or more owned and controlled by local Indians.

SECTION 7: NATION'S INVESTMENT; CAPITAL EXPENDITURES; DISTRIBUTIONS

- (a) **Investment by the Nation.** Upon the receipt by the Chairperson of the Nation of the notice specified in section 6(b) of this Charter, and upon a determination by the Chairperson that the Enterprise is in compliance with the Gaming Ordinance and otherwise capable of conducting gaming activities, the Nation will transfer to the Enterprise at book value all of the assets and liabilities of the Nation's gaming operation known as Papago Bingo. The amount by which such assets exceed liabilities shall be designated as an investment in the Enterprise by the Nation, and shall be shown on the Enterprise's accounting records as such.
- (b) **Operating Reserve.** The Enterprise is authorized to create an operating reserve to pay for operating expenses of up to \$500,000 which may be increased in amount upon prior approval of the Legislative Council.
- (c) **Capital Expenditures.** Subject to prior approval of the Legislative Council, the Enterprise is authorized to create a sinking fund for capital expenditures such as remodeling or additions, equipment acquisitions, expansion and new construction.
- (d) **Payment of Regulatory Costs and Tribal Contributions.** The Enterprise shall timely pay to the Arizona Department of Gaming the Nation's regulatory costs and tribal contributions required under Section 12 of the Compact. The Enterprise shall timely pay the contribution required under Section 12(d) of the Compact in accordance with the directives of the Legislative Council. The Enterprise shall comply with all accounting, auditing and record keeping requirements and obligations of the Nation under the Compact relating to the payment of regulatory costs and tribal contributions as required under Section 12 of the Compact.
- (e) **Distributions.** The Enterprise shall pay to the Nation as a distribution all available cash at the end of each month of operation. Distribution shall take place by the fifth banking day of the succeeding month.
- (f) **Definitions.** The following definitions are applicable to this section:
 - (1) The term "assets" means personal property, cash, accounts receivable and leasehold interests in real property;

- (2) The term “available cash” means all cash held by the Enterprise in bank accounts and cash equivalents, including certificates of deposit, treasury bills and other short-term investments, but excluding cash on hand, cash required to pay accrued and accruing liabilities, and any operating reserves and sinking funds.
- (3) The term “cash on hand” means change funds, coin inventories, and other cash banks, including funds held for jackpot payouts and in reserve banks.
- (4) The term “liabilities” means current liabilities, including current accounts payable and payroll, contingent liabilities and the regulatory costs and tribal contribution payment obligation under Section 12 of the Compact.

SECTION 8: IMMUNITY FROM SUIT

- (a) **Enterprise Immune from Suit.** The Enterprise is an entity of the Nation and is established for the benefit of the Nation. As such, it has the same immunity from suit as the Nation possesses. Notwithstanding the fact that the Enterprise is immune from suit, the Enterprise is hereby expressly granted the right to sue in its own name, and a limited right to be sued in its own name as more fully set out below. The Enterprise is not immune from suits, actions or proceedings initiated by the Nation or its regulatory agencies and departments. Nothing in this section 8 or in this Charter shall be construed as a waiver of or limitation on the sovereign immunity of the Nation.
- (b) **Limited Waiver of Immunity.** The Enterprise may be sued only in the Courts of the Nation, and only in the following limited circumstances:
 - (1) **Claims within Insurance Coverage.** With respect to claims against the Enterprise for any personal injury or property damage, the amount and nature of which are within the express coverage of a policy of insurance procured and maintained pursuant to section 6(j) of this Charter, as acknowledged by the insurer under such policy, the Enterprise’s immunity is waived to the lesser of the extent of such coverage or \$2,000,000, provided that any judgment, order or award may only be satisfied pursuant to:
 - (A) the express provisions of the policy(ies) of insurance which are in effect at the time of each such judgment, order or award; and
 - (B) an action, if necessary, brought by the prevailing party against the insurer under such policy.
 - (2) **Contract Claims.**
 - (A) With respect to claims against the Enterprise (i) arising out of any written contract to which the Enterprise is a party, and (ii) the amount and nature of which are not within the express coverage of a policy of insurance procured and maintained pursuant to section 6(j) of this Charter, as acknowledged by the insurer under such

policy, the Enterprise's immunity is waived to the lesser of the amount of the Enterprise's payment obligation under the contract or \$500,000.

- (B) The Enterprise's immunity from execution on any judgment, award or order is hereby waived only with respect to a pledge of, or security interest in, the Enterprise's personal property, cash, accounts receivable and other assets (exclusive of any leasehold interests) granted by the Enterprise as collateral for any payment obligations under such contract, provided that:
- (i) Execution on any such collateral shall be limited to that amount which, when added to amounts received from other sources in satisfaction of such judgment, award or order, does not exceed \$500,000.
 - (ii) Execution on any such collateral shall be solely by judicial process pursuant to a judgment, order or award of a court of competent jurisdiction.
 - (iii) For purposes of applying the provisions of this subsection (b)(2), all contracts entered into with the same party on the same subject matter shall be deemed to be one contract.

(3) **Claims Tried to Court.** Any claims for which the Enterprise's immunity is waived shall be tried to the court. Nothing herein shall be construed as a consent to trial by jury.

(4) **Suits Brought in Enterprise's Name.** All claims arising out of Enterprise operations shall be brought against the Enterprise directly and in the name of the Enterprise. Directors, officers, agents and employees of the Enterprise, when acting within the scope of their authority, are immune from suit.

(c) **Section Strictly Construed.** Except as otherwise expressly provided in this section 8, nothing contained in this Charter shall be interpreted or construed as:

- (1) A waiver of the sovereign immunity of the Enterprise beyond the limits set forth in this section 8;
- (2) A waiver of sovereign immunity of the Enterprise from the imposition in any judgment, order or award of interest prior or subsequent to judgment, attorney fees, court costs, civil penalties, or punitive, double, treble, incidental or consequential damages;
- (3) A waiver of the sovereign immunity of the Enterprise from a levy on any judgment, or a lien, attachment, execution or other judicial or non-judicial process upon the assets of the Enterprise; or
- (4) Creating any liability for the Nation with respect to any claims or other obligations asserted against the Enterprise or arising out of its operations.

The Legislative Council retains the power to prospectively modify this limited waiver of the Enterprise's immunity either generally or with respect to particular circumstances.

SECTION 9: DISSOLUTION AND LIQUIDATION

- (a) **Dissolution by Legislative Council.** The Enterprise can only be dissolved by action of the Legislative Council and pursuant to a plan of dissolution approved by the Legislative Council. Dissolution proceedings shall be initiated by the adoption of a Resolution by the Legislative Council expressing the Council's intent to dissolve the Enterprise. The Enterprise shall continue in existence during dissolution proceedings to permit the winding up of the Enterprise's affairs.

- (b) **Powers and Duties of the Management Board.**
 - (1) Within 60 days after the date the Legislative Council adopts the Resolution prescribed in subsection (a), or such other period of time as may be fixed in such Resolution, the Management Board shall submit a plan of dissolution for review and approval by the Legislative Council. The plan of dissolution shall include an anticipated time frame for execution of the plan and provide the following:
 - (A) the form and procedure for giving notice of the intent to dissolve to every known creditor of the Enterprise;
 - (B) an identification of the Enterprise's cash and accounts receivable and steps for collecting such assets;
 - (C) an inventory of all the Enterprise's personal property and other assets identifying which, if any, of the Enterprise's personal property is to be distributed to the Nation in kind, and the methods for disposition of all other assets;
 - (D) an identification of the Enterprise's liabilities and obligations and steps for satisfying or discharging such debts and obligations;
 - (E) an identification of uncollected or unasserted claims and liabilities of the Enterprise and steps for making adequate provision for such claims;
 - (F) steps for identifying and distributing the remainder of the Enterprise's assets, either in cash or in kind, to the Nation after all claims have been satisfied or otherwise provided for; and
 - (G) any other acts required to liquidate the Enterprise's assets and wind up its business.
 - (2) The Enterprise, during dissolution proceedings, shall have only those powers and duties which are authorized in an approved plan of dissolution and are necessary to wind up the Enterprise's business.

- (c) **Notice of Dissolution.** The Management Board shall notify the Chairpersons of the Nation and the Legislative Council in writing when, in accordance with an approved plan of dissolution, all debts, liabilities and obligations of the Enterprise have been paid and discharged, or adequate provision has been made therefor, and all the remaining property and assets of the Enterprise have been distributed.
- (d) **Dissolution.** The Enterprise shall be dissolved upon formal acceptance of the notice of dissolution by the Legislative Council, and this Charter shall be repealed.