

## **TITLE 16 – GAMING**

### **CHAPTER 2 – GAMING ENTERPRISE**

*Legislative History: The “Charter of the Tohono O’odham Gaming Authority” was adopted and approved on September 21, 1993 by Resolution No. 93-311; amended by Resolution No. 02-294 (to clarify management board members’ terms) on August 22, 2002; amended by Resolution No. 03-231 (regarding payment of regulatory costs) on May 23, 2003; amended and renamed “Charter of the Tohono O’odham Gaming Enterprise” on October 29, 2004 by Resolution No. 04-513; amended by Resolution No. 15-062 (amending subsections 7(e) and 7(f)) on March 11, 2015; amended by Resolution No. 17-408 (amending Section 7 reserve and capital expenditure provisions) effective September 25, 2017; amended by Resolution No. 21-278 (amending Section 5(c)(3) to adjust the management board quorum requirement) effective August 19, 2021; amended by Resolution No. 21-437 (amending Sections 6(m)(1) and (2) to establish a first preference for enrolled members of the Nation in employment and contracting and Section 5(d)(4) to expressly recognize the Enterprise’s authority) effective November 22, 2021; amended by Resolution No. 23-070 (amending Section 6(m)(1) to clarify the Tohono O’odham Gaming Office’s authority to adopt licensing or other regulations enforcing the Gaming Enterprise’s implementation and application of preference) effective March 9, 2023; amended by Resolution No. 23-293 (adding Section 7(g) Prohibition on Gifts to Elected Officers and Employees) effective August 8, 2023; amended by Resolution No. 24-033 (approving transfer of the Desert Diamond Mobile LLC membership interest to the Gaming Enterprise as subsidiary and additional amendments) effective February 1, 2024.*

## **TITLE 16 – GAMING**

### **CHAPTER 2 –GAMING ENTERPRISE**

#### **TOHONO O’ODHAM GAMING ENTERPRISE CHARTER**

##### **TABLE OF CONTENTS**

Section 1	Establishment and Purposes.....	1
Section 2	Powers .....	1
Section 3	Definitions.....	2
Section 4	Place of Business .....	3
Section 5	Management Board .....	3
Section 6	Operations .....	9
Section 7	Capital Expenditures; Distributions.....	14
Section 8	Immunity from Suit .....	17
Section 9	Dissolution and Liquidation.....	19

# TOHONO O'ODHAM GAMING ENTERPRISE CHARTER

## SECTION 1: ESTABLISHMENT AND PURPOSES

- (a) **Establishment.** The Tohono O'odham Gaming Enterprise was established as an enterprise of the Tohono O'odham Nation pursuant to Article VI, Section 1(e) of the Nation's Constitution by Resolution 93-311 of the Legislative Council. The Enterprise shall have and may exercise all those powers set forth in this Charter.
- (b) **Purposes.** The Enterprise was organized as a subordinate economic organization of the Nation, as an exercise by the Nation of rights of self-government under the Constitution, with the specific purposes of:
  - (1) Pursuing the goal of economic self-sufficiency;
  - (2) Establishing a financially self-sustaining and successful tribal enterprise that will provide a source of funding for the Nation's governmental services;
  - (3) Promoting tribal and economic development, including through providing training and employment opportunities for members of the Nation; and
  - (4) Producing the maximum economic return to the Nation consistent both with the foregoing purposes and with the fair and reasonable expectations of gaming activity patrons.

## SECTION 2: POWERS

The Enterprise is empowered and responsible to:

- (a) Conduct gaming activities on the Nation's lands, pursuant to the highest standards of honesty and integrity, in accordance with the terms and conditions of the Gaming Ordinance and regulated by the Gaming Office;
- (b) Operate gaming facilities and ancillary facilities on the Nation's lands, with those facilities designed to provide for the safety and comfort of patrons of the Enterprise's gaming activities and its related amenities;
- (c) Through a Subsidiary, conduct mobile event wagering in the State of Arizona, pursuant to the highest standards of honesty and integrity, in accordance with the terms and conditions of the Act and the Article and regulated by the ADG; and

- (d) Take all actions necessary or advisable to carry out the foregoing functions consistent with the requirements of, as applicable, the Gaming Ordinance or the Act and the Article.

### **SECTION 3: DEFINITIONS**

- (a) The term “Act” means Title 5, Arizona Revised Statutes, Chapter 11.
- (b) The term “ADG” means the Arizona Department of Gaming.
- (c) The term “Article” means the Arizona Administrative Code, Title 19, Chapter 4, Article 1.
- (d) The term “Chairperson of the Nation” means the Chairperson of the Nation whose office is established under Articles IV and VII of the Constitution.
- (e) 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).
- (f) The term “District” means one of the eleven subdivisions of the Nation’s government established under the Constitution.
- (g) The term “Elected Officer” means an elected “officer” of the Nation or a District, as defined in 12 T.O.C. Chapter 1.
- (h) The term “Employment Rights Ordinance” means the Nation’s Tribal Employment Rights Ordinance, 13 T.O.C. Chapter 1.
- (i) The term “Enterprise” means the Tohono O’odham Gaming Enterprise established under this Charter.
- (j) The terms “gaming activity,” “gaming facility,” and “gaming operation” shall have the same meaning assigned to such terms in the Gaming Ordinance.
- (k) The term “Gaming Office” means the Tohono O’odham Gaming Office established under the Gaming Ordinance.
- (l) The term “Gaming Ordinance” means the Ordinance for the Regulation of Gaming Activities within the Tohono O’odham Nation, 16 T.O.C. Ch. 1.

- (m) The term “Legislative Council” means the Nation’s Legislative Council established under Articles IV, V, and VI of the Constitution.
- (n) The term “Management Board” means the Board of Directors established under section 5 of this Charter.
- (o) The term “Nation” means the Tohono O’odham Nation, a federally recognized Indian tribe, organized under the Constitution.
- (p) The term “Subsidiary” means any subsidiary entity or organization owned and controlled by the Enterprise, including Desert Diamond Mobile LLC, a Delaware limited liability company and subordinate economic organization of the Nation, which is wholly owned by the Enterprise.

#### **SECTION 4: 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 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, any Subsidiary, the Gaming Office, or the Bureau of Indian Affairs, and no Elected Officer, 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 serve staggered three-year terms. Directors shall be eligible for reappointment upon expiration of their terms of office. Unless a Director is removed or resigns, 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, to the Chairperson of the Nation, and to the Legislative Council Commerce Committee. Resignations shall become effective at the time specified in said notice or, if no time is specified, upon delivery to all the required recipients. Any Director who fails to attend three consecutive and properly called and noticed meetings of the Management Board or who fails to attend two-thirds (2/3) of all Management Board meetings properly called and noticed in any fiscal year, unless excused from attendance for a justifiable cause, shall be considered to have resigned his/her directorship. The Chairperson of the Board shall promptly notify the Chairperson of the Nation and the Legislative Council Commerce Committee 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 Management 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 of the Board shall perform all duties incident to the office

of Chairperson 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, in the absence of the Chairperson of the Board or in the event of his or her inability or refusal to act, shall perform the duties of the Chairperson and, when so acting, shall have all the powers and be subject to all the restrictions that 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;
  - (B) Seeing that all notices are duly given in accordance with the provisions of this Charter;
  - (C) Keeping 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 Management 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 providing 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; provided that if fewer than six Directors are holding office, the quorum shall be three. 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) **Electronic Meetings/Unanimous Written Consent.** Meetings of the Directors may be held by electronic means, provided all persons participating in the meeting can speak to and hear each other, and participation in such a meeting shall constitute presence in person at the meeting. On any matter that is to be voted on, consented to, or approved by the Directors, the Directors may take such action without a meeting, without prior notice, and without a vote if unanimously consented to or



approved, in writing, by electronic transmission or by any other means permitted by law, by all Directors then holding office.

- (5) **Rules.** The Management Board may adopt such bylaws or rules as it may determine necessary for the orderly conduct of its business.
- (6) **Minutes.** The Secretary shall arrange for the taking of minutes of the Management Board's meetings. Copies of the minutes of each meeting, and copies of the documentation of any actions taken by written consent without a 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, the Legislative Council Commerce Committee, and any employee or official of the Nation designated by either of such Chairpersons in writing.
- (7) **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 sections 1 and 2 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 amenities and be responsible for the planning, construction, and management of all new or additional gaming facilities and related amenities including, but not limited to, restaurants and bars, entertainment facilities, hotels, resort facilities, retail stores, and parking 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 Enterprise's Director of Surveillance on matters of policy, purpose, responsibility, authority, and integrity of casino management.
- (6) Use, improve, maintain, operate, and manage, in the ordinary course of business, all interests in real property held by the Enterprise, including negotiating and executing leases or subleases of real property subject to approval of the Legislative Council and negotiating and executing land assignments with the Nation; provided however, that nothing in this Charter shall be construed as authorizing the Enterprise to mortgage or encumber trust property 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) 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 any acquisitions of title to such intellectual property from third parties shall be held in the name of the Nation and such interests may be sold only with the prior consent of the Legislative Council.
- (9) Enter into, make, perform and carry out, or cancel or rescind contracts for any lawful purpose pertaining to the Enterprise's business; provided, however, that no contract or other transaction between the Enterprise and (a) any Director(s), officer(s), or employee(s) of the Enterprise, (b) any Elected Officer(s), (c) any employee(s) of the Nation or any District, or (d) any corporation, limited liability company, 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, in writing, to the Management Board and the proposed contract or transaction thereafter 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.

- (10) Borrow funds, subject to the express limitations that the Enterprise shall not incur obligations exceeding its ability to pay as required and the Nation shall not be liable for the debts or obligations of the Enterprise.
- (11) 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 (excluding any leasehold interests in trust property or restricted real property of the Nation) as collateral for any contractual obligation.
- (12) Designate and approve all depositories used for the deposit of funds of the Enterprise.
- (13) With the approval of the Legislative Council, create or acquire subsidiary entities or organizations, if it is desirable or necessary for certain business operations to be operated separately from the business operations conducted directly by the Enterprise.
- (14) 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.
- (15) Approve annual Enterprise budgets prior to the commencement of each fiscal year.
- (16) Make a formal report regarding the Enterprise's operations to the Chairperson of the Nation and to 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.
- (17) Recommend amendment or revision of this Charter to the Legislative Council whenever deemed appropriate to improve the operation and management of the Enterprise.
- (18) 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 the Enterprise's 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 (1) compliance with policies and procedures approved by the Management Board, (2) conformance to budgets, and (3) 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 the Enterprise's 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 engage a qualified certified public accountant to serve as the Enterprise's Chief Financial Officer (CFO). The CFO shall obtain a gaming employee's license pursuant to the Gaming Ordinance prior to employment. The CFO shall report directly to the CEO and shall be subject to the CEO's direction and supervision. The CFO 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) **General Manager.** The CEO may hire a General Manager for any of the Enterprise's gaming facilities. A General Manager shall obtain a gaming employee's license pursuant to the Gaming Ordinance prior to employment. A General Manager may report directly to the CEO and be subject to the CEO's direction and supervision. A General Manager shall

have primary management responsibility for the gaming facility to which s/he is assigned.

- (b) **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 to the Legislative Council.
- (c) **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.
- (d) **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.
- (e) **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(s) or financial institution(s) as the Management Board may select.
- (f) **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 with all requirements of the Gaming Ordinance.
- (g) **Records; inspection; audits.** The books and records of the Enterprise, including current financial and operating statements, shall be kept on file in, or accessible from, the offices 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, the Legislative Council Commerce Committee, and 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 after the close of each fiscal year. A copy of the final audit shall be provided to the Chairpersons of the Nation and the Legislative Council.
- (h) **Budgets.** A budget of the Enterprise for each fiscal 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.

- (i) **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, against the Enterprise for personal injury or 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.
- (j) **Bonding.** The Enterprise shall maintain employee theft and dishonesty insurance covering all officers, agents, or employees directly responsible for funds or property or may bond such officers, agents, or employees at the Enterprise's expense.
- (k) **Indemnification.** The Enterprise shall provide advancement to and shall indemnify any current or former officer or employee of the Enterprise or Director of the Management Board for reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding, commenced by a party other than the Enterprise, in which s/he is made a party by reason of being, or having been, an officer, employee, or Director, except that indemnification will not be required if such person shall be adjudged in such action, suit, or proceeding to have engaged in gross negligence, to have engaged in willful misconduct in the performance of duty, to have been acting beyond the scope of his or her duties, or to have been engaged in criminal conduct. The Enterprise shall also indemnify any such officer, employee, or Director for reasonable costs of settling any such action, suit, or proceeding if a majority of the Management Board, other than Directors involved in the matter or controversy (whether or not a quorum exists), find 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 did not engage in gross negligence or willful misconduct in the performance of duty, did not did not act beyond the scope of his or her duties,

and did not engage in criminal conduct. Such rights of advancement, indemnification, and reimbursement shall not be deemed exclusive of any other rights which a current or former officer, employee, or Director may have.

- (l) **Indian Preference in Employment and Contracting.** The Enterprise shall comply with all provisions of the Employment Rights Ordinance, subject to the following requirements:
  - (1) The Enterprise shall give preference to qualified Indians, with first preference to enrolled members of the Tohono O’odham Nation and then to other local Indians, in all hiring, promotion, training, lay-offs, and other aspects of employment. The Gaming Office is vested with authority to adopt licensing or other regulations enforcing the Gaming Enterprise’s implementation and application of “preference” as defined herein; and
  - (2) The Enterprise, when awarding contracts in an amount of \$5,000.00 or more for supplies, services, labor, or materials in which the majority of work will occur within the Nation, shall give preference in contracting to qualified individuals or entities certified by the Tohono O’odham Employment Rights Commission as 51% or more Indian owned and controlled, with a first preference to qualified individuals or entities that are 51% or more owned and controlled by enrolled members of the Tohono O’odham Nation and then to qualified individuals or entities that are 51% or more owned and controlled by other local Indians.

## **SECTION 7: CAPITAL EXPENDITURES; DISTRIBUTIONS**

- (a) **Operating Reserve.** The Enterprise is authorized to create an operating reserve to pay for operating expenses to provide:
  - (1) cash on hand for gaming operations and adequate working capital to pay the obligations of the Enterprise and its Subsidiaries (without duplicating any reserves held by the Subsidiaries), including cash to pay accrued and accruing liabilities of the Enterprise and its Subsidiaries, provided the retained amount shall not exceed an amount equal to twenty-five percent (25%) of the annual operating expenses of the Enterprise and its Subsidiaries; and
  - (2) funds to make debt service payments; and
  - (3) funds to maintain compliance with applicable loan covenants; and



- (4) funds for Maintenance Capital Expenditures, as defined in subsection (e)(3)(b) below, to properly maintain gaming facilities, ancillary facilities, and equipment, in order to minimize deferred maintenance, and the intangible assets of the Enterprise and its Subsidiaries; and
  - (5) funds to ensure the payment of regulatory costs and tribal contributions as required by subsection (c) below; and
  - (6) funds to pay such other costs as directed solely by Legislative Council resolution.
- (b) **Sinking Fund.** Subject to prior approval of the Legislative Council, the Enterprise is authorized to create a sinking fund for capital expenditures as defined in subsection (e)(3) below.
- (c) **Payment of Regulatory Costs and Tribal Contributions.** The Enterprise shall timely pay to the ADG 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.
- (d) **Distributions.** The Enterprise shall pay to the Nation as a distribution all available cash on a monthly basis; such distributions shall take place by the fifteenth and the last day of the month in which the available cash is generated.
- (e) **Definitions.** The following definitions are applicable to this section:
  - (1) The term "assets" means property, cash and cash equivalents, investments, accounts receivable, and other fixed assets.
  - (2) The term "available cash" means cash in bank held by the Enterprise and its Subsidiaries, including certificates of deposit, and other short-term investments, but excluding cash on hand, cash, funds, and reserves retained pursuant to subsection (a) above.
  - (3) The term "capital expenditures" means for any period, the sum of all amounts that would, in accordance with GAAP, be included in financial statements as additions to property, plant, and equipment, including acquisition, construction, improvement, replacement, or betterment of

land, buildings, machinery, equipment, or any fixed assets, leaseholds, or capitalized intangible assets.

- (A) “Growth Capital Expenditures” means capital expenditures for the addition to or improvement of the gaming operations, including the expansion of or improvement of gaming or ancillary facilities, the construction of new gaming or ancillary facilities, and the equipping of any additions to gaming or ancillary facilities.
- (B) “Maintenance Capital Expenditures” means capital expenditures for the maintenance, repair, restoration, upgrade, enhancement, or refurbishment of fixed or capital assets of the Enterprise or its Subsidiaries or to extend the useful life of such assets.
- (4) The term “cash on hand” means operating cash to fund the casino cages, chip inventories, ATM machines, and other cash banks, including funds held for jackpot payouts.
- (5) The term “debt service” means the amount of cash flow required to meet annual interest and principal payments on debt, including sinking fund payments.
- (6) The term “liabilities” means current liabilities, including current accounts payable, payroll, and contingent liabilities.
- (f) **Prohibition on Gifts to Elected Officers and Employees.** The Enterprise shall not provide transportation, per diem, food, beverages, lodging, conference registration fees, entertainment, cash, or any other service or item at no cost, or at a reduced cost, to an Elected Officer or to an employee of the Nation or a District, except:
  - (1) food and nonalcoholic beverages may be provided for consumption during a business meeting with the Enterprise;
  - (2) items valued under \$50.00, local group transportation services, and refreshments may be provided for a public event hosted by the Enterprise where Elected Officers or employees of the Nation or a District attend for a business purpose; provided that the Enterprise shall report the value and recipient(s) of such gifts in writing on a quarterly basis to the Legislative Council, Chairperson of the Nation, and Nation’s Treasurer; or
  - (3) a complimentary item or service may be provided to an individual solely in consideration of that individual being a patron or customer of the

Enterprise or its Subsidiaries and consistent with all applicable laws, policies, and regulations, including minimum internal control standards for complementary services and items.

## **SECTION 8: IMMUNITY FROM SUIT**

- (a) **Enterprise Immune from Suit.** The Enterprise is a subordinate economic organization 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(i) 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(i) 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 the Enterprise's operations, and as to which the Enterprise's immunity has been waived, shall be brought against the Enterprise directly and in the name of the Enterprise. Directors, officers, employees, and agents 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 before or after 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 be dissolved only 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 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.