

APRIL 2015 CROW TRIBAL LEGISLATURE

BILL NO. CLB 15-09

INTRODUCED BY DARRIN OLD COYOTE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

A BILL FOR AN ACT ENTITLED:

**“SECTION 17 CHARTER OF INCORPORATION FOR THE CROW GAMING AND
ENTERTAINMENT CORPORATION”**

WHEREAS, pursuant to Article V, Section 2(a) of the 2001 Crow Tribal Constitution, the Crow Tribal Legislature (hereinafter, the “Legislature”) is vested with the power and duty to promulgate and adopt laws, resolutions, ordinances, codes, regulations, and guidelines in accordance with the 2001 Crow Constitution and federal laws;

WHEREAS, the United States Congress enacted the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 461 et seq, which authorizes the Secretary of the Interior to issue a federal corporate charter to an Indian tribe, including the Crow Tribe of Indians (hereinafter, the “Tribe”); and,

WHEREAS, the Legislature has determined that the creation of the Crow Gaming and Entertainment Corporation (hereinafter, the “Corporation”) pursuant to a charter issued under Section 17 of the Indian Reorganization Act (25 U.S.C. § 477) will serve the best interests of the Tribe and its members; and,

WHEREAS, the Legislature finds that creating the Corporation will protect the Tribe’s political integrity, economic security, health, and welfare by segregating the governmental assets and liabilities from the assets and liabilities of certain tribal businesses; establishing a legal structure to permit the Corporation to segregate its assets and liabilities through the creation of corporate subdivisions; allowing the Corporation to conduct its business without impairing either the Tribe’s or Corporation’s privileges and immunities under federal and tribal law; and,

WHEREAS, the Corporation will operate and manage certain of the Tribe’s gaming and entertainment related businesses;

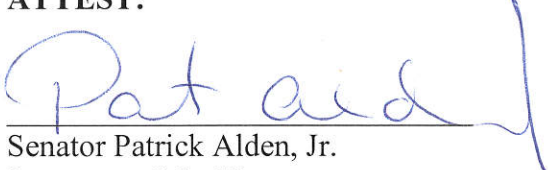
NOW THEREFORE BE IT RESOLVED, that the Legislature hereby enacts law creating the Corporation, a federally chartered corporation, through the document attached hereto and incorporated by reference titled “Federal Charter of Incorporation Issued by the United States Department of the Interior Bureau of Indian Affairs to the Crow Tribe of Indians for the Crow Gaming and Entertainment Corporation a federally chartered corporation.”

CERTIFICATION

I hereby certify that this Bill for an Act entitled "**SECTION 17 CHARTER OF INCORPORATION FOR THE CROW GAMING AND ENTERTAINMENT CORPORATION**" was duly approved by the Crow Tribal Legislature with a vote of 14 in favor, 0 opposed, and 0 abstained, and that a quorum was present on this 21st day of July, 2015.


Senator R. Knute Old Crow
Speaker of the House
Crow Tribal Legislature

ATTEST:

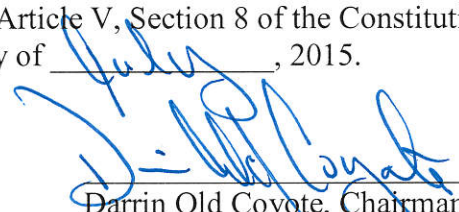

Senator Patrick Alden, Jr.
Secretary of the House
Crow Tribal Legislature



EXECUTIVE ACTION

I hereby
X **APPROVE**
 VETO

This Bill for an Act entitled "**SECTION 17 CHARTER OF INCORPORATION FOR THE CROW GAMING AND ENTERTAINMENT CORPORATION**" pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 31st day of July, 2015.


Darrin Old Coyote, Chairman
Crow Tribal Executive Branch

A BILL FOR AN ACT ENTITLED:
 "SECTION 17 CHARTER OF INCORPORATION FOR THE CROW GAMING
 ENTERTAINMENT CORPORTION"

Bill or Resolution: CLB15-09 Introduced by: Chairman Darrin Old Coyote Date of Vote: 7/21/2015
 Number

<u>Representative:</u>	Yes	No	Abstained
G. Three Irons	<u> X </u>	<u> </u>	<u> </u>
B. Rogers	<u> </u>	<u> </u>	<u> </u>
C. J. Stewart	<u> </u>	<u> </u>	<u> </u>
P. Hill	<u> X </u>	<u> </u>	<u> </u>
E. Birdinground	<u> X </u>	<u> </u>	<u> </u>
A.Coyote-Runs, Sr.	<u> </u>	<u> </u>	<u> </u>
V. Nomee	<u> X </u>	<u> </u>	<u> </u>
T. Gros Ventre	<u> X </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> X </u>	<u> </u>	<u> </u>
P. Spotted Horse, Sr.	<u> X </u>	<u> </u>	<u> </u>
L. DeCrane	<u> X </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> X </u>	<u> </u>	<u> </u>
B. Hugs	<u> </u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u> X </u>	<u> </u>	<u> </u>
B. Good Luck	<u> X </u>	<u> </u>	<u> </u>
G. Stewart	<u> X </u>	<u> </u>	<u> </u>
P. Alden, Jr. <i>Secretary of the House</i>	<u> X </u>	<u> </u>	<u> </u>
R. Old Crow, Sr. <i>Speaker of the House</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 14 </u>	<u> 0 </u>	<u> 0 </u>


Result of Vote:

Passed


Not Passed

Tabled

Veto-Override


 Senator R. Knute Old Crow, Sr.
 Speaker of the House

Date


 Senator Pat Alden, Jr.
 Secretary of the House

Date

7-21-15

7-30-15

FEDERAL CHARTER OF INCORPORATION

Issued by

THE UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

to the

CROW TRIBE OF INDIANS

for the

CROW GAMING AND ENTERTAINMENT CORPORATION

a federally chartered corporation

RECITALS

WHEREAS, the United States Congress enacted the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 461 et seq, which authorizes the Secretary of the Interior to issue a federal corporate charter to an Indian tribe; and,

WHEREAS, the Crow Tribe of Indians (Nation) is a federally recognized Indian tribe that has existed in what is now eastern Montana since time immemorial; and,

WHEREAS, pursuant to Article V of its Tribal Constitution, the Crow Tribal Legislature is the legislative body of the Nation; and,

WHEREAS, pursuant to Article IV of the Nation's Constitution, the Chairman is the Chief Executive Officer of the Nation; and,

WHEREAS, the Nation's Legislature and Chairman approved this Charter on July 21, 2015; and,

WHEREAS, the Nation has determined that the creation of the Crow Gaming and Entertainment Corporation (Corporation) pursuant to a charter issued under Section 17 of the Indian Reorganization Act (25 U.S.C. § 477) will serve the best interests of the Nation and its members by protecting the Nation's political integrity, economic security, health, and welfare by: segregating the Nation's governmental assets and liabilities from the assets and liabilities of certain tribal businesses; establishing a legal structure to permit the Corporation to segregate its assets and liabilities through the creation of corporate subdivisions; allowing the Corporation to conduct its business without impairing the Nation's and the Corporation's privileges and immunities under federal and tribal law; and,

WHEREAS, the Corporation will operate and manage certain of the Nation's gaming and entertainment related businesses; and,

WHEREAS, the terms and provisions of this Charter were approved by the Nation on July 21, 2015 pursuant to _____; and,

WHEREAS, this Charter satisfies all applicable requirements of tribal and federal law;

NOW THEREFORE, the United States Secretary of the Interior issues this Charter of Incorporation to the Crow Tribe of Indians for the Crow Gaming and Entertainment Corporation pursuant to delegated authority under the Indian Reorganization Act and applicable regulations of the Department of the Interior.

ARTICLE I – NAME

The name of the Corporation is the Crow Gaming and Entertainment Corporation.

ARTICLE II – PRINCIPAL OFFICE AND REGISTERED OFFICE

- A. Principal Office. The Principal Office of the Corporation shall be located within the exterior boundaries of the Crow Indian Reservation (Reservation). The Corporation may have such other offices, either within or without the Reservation, as the Board of Directors may designate or as the business of the Corporation may require.
- B. Registered Office. The Registered Office of the Corporation need not be identical with the Corporation's principal place of business, and may be changed from time to time by the Board of Directors. In all events, the Registered Office shall be located on the Nation's trust or restricted lands.
- C. Situs of Transactions. Any business transaction executed by the Corporation shall be deemed to occur on the Nation's trust or restricted lands, unless no incident of such transaction occurs on the Nation's lands.

ARTICLE III – AUTHORITY FOR CHARTER

The Corporation is organized, incorporated and chartered under the laws of the United States as a federally chartered corporation under 25 U.S.C. § 477, as amended, and shall have all of the powers, privileges and immunities protected by that statute.

ARTICLE IV – STATUS OF CORPORATION

- A. Separate Legal Existence. The Corporation is a separate and distinct legal entity that is wholly owned by the Nation. The activities, transactions, obligations, liabilities, and

property of the Corporation are not those of the Nation; provided, that the Corporation may act on behalf of the Nation in the circumstances and to the extent specified in this Charter or as expressly authorized by the Nation, acting pursuant to its own laws and procedures. The Corporation's revenues will ultimately benefit the Nation, in the same manner in which tax revenues benefit non-Indian governments, by supporting the Nation's governmental activities undertaken for the welfare of its citizens.

- B. Privileges and Immunities. The Corporation shall be subject to tribal law, and shall have the same rights, privileges, and immunities with respect to tribal, federal, state and local law as the Nation; provided, however, that no valid legal contract between the Corporation and any person or entity, and no person or entity which enters into any such contract with the Corporation, shall be subject to any of the Nation's laws enacted after the execution of such contract, except as the person or entity may otherwise specifically agree in the contract notwithstanding this provision, to the extent such subsequent Tribal law is held by a court of competent jurisdiction to effect a material impairment of such contract and to have a primary purpose other than protecting the political integrity, the economic security, or the health or welfare of the Nation.
- C. Exhaustion of Tribal Remedies. The Corporation is hereby authorized to waive, in the same manner as provided for sovereign immunity under Article VIII, any defense the Corporation, its directors, officers, employees, attorneys, or agents may otherwise assert that federal, state, or Tribal law requires exhaustion of tribal court remedies prior to suit against the Corporation in a state or federal court otherwise having jurisdiction over the subject matter and the parties.
- D. The Nation's Sovereign Immunity. Nothing in this Charter shall be understood to waive, or to permit the Corporation to waive, the Nation's sovereign immunity.

ARTICLE V – OWNERSHIP OF THE CORPORATION

- A. Wholly Owned by Nation. All shares in the Corporation shall be owned solely by the Nation, for the benefit of the Nation and its citizens. No individual or legal entity other than the Nation shall acquire any shares in the Corporation.
- B. Shares not to be Sold. The Nation's shares in the Corporation shall not be assigned, sold, pledged, or otherwise transferred without the prior written consent of the Nation, acting through its government according to its own laws and procedures, and the approval of the Secretary of the Interior.

ARTICLE VI – DURATION

The period of the Corporation's duration is perpetual, or until this Charter is revoked or surrendered by an Act of congress, pursuant to 25 U.S.C. § 477, as amended.

ARTICLE VII – CORPORATE PURPOSES

The Corporation is organized for the following purposes:

- A. To engage in any type of lawful business, enterprise, or venture related to the operation of the Nation's gaming, hospitality, entertainment, tourism, and related businesses, subject to Article IX(I) of this Charter, and to promote the economic development of the Nation to further these businesses;
- B. To facilitate the segregation of the Nation's governmental assets and liabilities from its business assets and liabilities; and,
- C. To provide a vehicle for the Nation to accomplish the financing of projects used in the Nation's provision of essential governmental services.

Nothing in this article shall be construed to limit the Nation's authority to charter or establish separate business organizations for any purpose, or to directly engage in any business activities.

ARTICLE VIII – CORPORATE POWERS

Subject to applicable federal law, the Corporation is authorized and empowered to engage in, carry on and conduct any lawful activity or business in which federally chartered corporations may engage pursuant to 25 U.S.C. § 477, as amended, including, but not limited to, the following:

- A. Sue and be sued, and limited waivers of sovereign immunity. The Corporation may sue in its corporate name, may authorize suits against itself in its corporate name, and may agree to and engage in any dispute resolution process in the courts of the Nation, the United States, or any other appropriate court or forum; provided, this authorization does not constitute a waiver of the Corporation's sovereign immunity from suit. The Corporation may condition, limit, modify, or waive its immunity from suit, subject to the following:
 - 1. Such actions must comply with governing tribal law;
 - 2. Such actions must be in writing, and expressly state the manner in which the Corporation's sovereign immunity is conditioned, limited, modified, or waived;
 - 3. Such actions must be approved by a vote of the Corporation's Board of Directors;
 - 4. Contractual agreements providing for the court enforcement of dispute resolution awards shall not be construed as a condition, limitation,

modification, or waiver of sovereign immunity without other language expressly taking such action; and,

5. Individual agents, employees, or officers of the Corporation are not authorized to condition, limit, modify, or waive the Corporation's sovereign immunity from suit.
- B. No judgment, lien, garnishment, or attachment. No judgment, lien, garnishment or attachment may be made upon any property or income of the Corporation other than that property or income specifically mortgaged, pledged or assigned as collateral for its corporate debts or liabilities in a writing approved by the Board.
 - C. Accept, own, hold, lease, manage, operate, purchase, and use real or personal property. The Corporation may accept, own, hold, lease (as lessee), manage, operate, purchase, and use real or personal property, whether such property is held in fee, trust, or restricted status.
 - D. Sell, convey, mortgage, pledge, and lease corporate property or assets. The Corporation may sell, convey, mortgage, pledge, and lease (as lessor) corporate property or assets. The Corporation may not sell, convey, mortgage, pledge or lease (as lessor) any property of the Nation without its express consent; provided, the Corporation may mortgage or sublease any leasehold interest it may have in the Nation's property.
 - E. Corporate seal. The Corporation may adopt a corporate seal, which may be altered at the discretion of the Board of Directors; provided, the failure to affix the corporate seal shall not affect the validity of any instrument of, or any action taken by, the Corporation.
 - F. Establish subdivisions or other sub-entities. The Corporation may establish subdivisions or sub-entities to carry on the business of the Corporation. The assets and liabilities of such subdivisions and sub-entities shall be segregated from the assets and liabilities of the Corporation and other subdivisions and sub-entities. Each subdivision and sub-entity shall be vested with all of the privileges and immunities granted by this Charter, subject to the limitations in this Charter.
 - G. Negotiate, enter into and perform contracts of every kind and nature. Subject to applicable tribal or federal law, the Corporation may negotiate and enter into and make and perform contracts of every kind and nature.
 - H. Incur debts and borrow or raise money. Subject to applicable tribal or federal law, and the limitations imposed by this Article, the Corporation may incur debts and borrow or raise money in any lawful manner, including the issue and sale or other disposal of stocks, bonds, indentures, obligations, negotiable and transferrable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of

trust or otherwise. The Corporation may exercise this power without the approval of the Nation or the Secretary of the Interior. This power shall be further subject to the following limitations:

1. Any such borrowing shall be for the purpose of financing, or refinancing, property used by the Corporation in its gaming, hospitality, and entertainment-related business activities.
 2. Any such debts or borrowing shall be payable solely from (a) the property and income identified and pledged thereto by the Board pursuant to this Article, whether or not such property or income is derived from property financed in whole or in part with the proceeds of any borrowing, or (b) all or any part of the revenues of the Corporation's business; and,
 3. No such debts or borrowing shall create an obligation of the Nation, constitute a waiver of the Nation's sovereign immunity, or create a liability on the part of the Nation, except where otherwise permitted under this Article or pursuant to tribal law.
- I. Own or dispose of any trademark, trade name, patent or invention. The Corporation may apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters patent, and to use, exercise develop, grant and give licenses in respect thereto.
- J. Purchase any license, power, authority, franchise, or concession. The Corporation may apply for, acquire, purchase, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government, authority, corporation, or other public body may be empowered to enact, make or grant. Subject to the limitations in this Article, the Corporation may pay for and appropriate any of its assets to defray the necessary costs in the exercise of this power.
- K. Distribute all revenues of the Corporation; distributions. The Corporation may distribute all of its revenues to: (i) defray corporate obligations; (ii) establish and invest in a suitable capital reserve fund; and, (iii) make distributions to the Nation as the Owner of the Corporation. The Board shall endeavor at all times to manage and operate the Corporation with the objective of minimizing expenses and maximizing the benefit to the Nation.
- L. Employ or appoint officers, employees, and agents. The Corporation may employ or appoint officers, employees, agents, consultants, or independent contractors, including attorneys and accountants, and define their duties and fix their compensation.

- M. Lend money and invest its funds. The Corporation may lend money for its corporate purposes, invest and reinvest its funds and take and hold real or personal property as security for the payment of funds so lent and invested.
- N. Development. The Corporation may develop, design, construct and equip any facilities for use by, or useful to, the Corporation, or employ developers or consultants to undertake same.
- O. Adopt and amend corporate bylaws. The Corporation may adopt and amend bylaws (Bylaws) consistent with the Nation's laws and regulations, and this Charter, to provide for the regulation of the Corporation's internal affairs. The Corporation may adopt and amend the Bylaws without the approval of the Secretary of the Interior.
- P. Establish incentives. The Corporation may establish incentive plans for any or all of its directors, officers and employees, subject to applicable tribal law.
- Q. Obtain certificates of authority to transact business. The Corporation may obtain certificates of authority to transact business, in its own name or through its subdivisions or sub-entities, in any of the United States and other federally recognized tribes as a foreign corporation and to comply with applicable laws governing foreign corporations.
- R. Exercise all lawful powers incidental, necessary, or convenient. The Corporation may exercise all lawful powers incidental, necessary or convenient to effect any or all of the purposes for which the Corporation is organized.

ARTICLE IX – LIMITATIONS ON CORPORATE POWERS

The Corporation shall not have the power to do any of the following:

- A. The Corporation may not enter into any agreement on behalf of the Nation, either expressly or by implication, other than in the circumstances and to the extent specified in this Charter or as authorized through a lawful act of the Nation.
- B. The Corporation may not hold itself out as an agent of the Nation, except as otherwise permitted in this Charter or as authorized through a lawful act of the Nation.
- C. The Corporation may not pledge the Nation's credit.
- D. The Corporation may not dispose of, pledge, or otherwise encumber the Nation's real or personal property, other than the Corporation's interest in such property.
- E. The Corporation may not waive any right, privilege, or immunity of the Nation.
- F. The Corporation may not release any obligation owed to the Nation.

- G. The Corporation may not enter into any sublease or other instrument respecting lands leased to the Corporation by the Nation without the Nation's authorization.
- H. The Corporation may not engage in any activity prohibited by Section 17 of the Indian Reorganization Act.
- I. The Corporation may not operate any gaming facility within forty-five (45) miles of a class III gaming facility operated by Absaloka Casino Enterprises, Inc. (ACE, Inc.) that is in operation as of the date of this Charter.

Nothing in this Charter shall be construed as permitting, recognizing, or granting any state, or political subdivision thereof, any regulatory, taxing, or other form of jurisdiction over the property or activities of the Nation, the Corporation, or its employees located within the Nation's boundaries or upon the Nation's other trust or restricted lands.

ARTICLE X – OWNER ACTION

- A. Shareholder Representative. The Nation's Chairman, Speaker of the House, and Chairman of the Legislature's Gaming Committee shall together serve as the Shareholder Representative. All rights of the Owner shall be exercised by these officials serving in their capacity as Shareholder Representative in accordance with this Charter and applicable tribal law.
- B. Communication with the Shareholder Representative. Any communication from the Board to the Shareholder Representative required by this Charter, shall be delivered to each individual serving as the Shareholder Representative. Any required communication shall not be considered to have been issued until it has been delivered to each such designated official.
- C. Regular Shareholder Meetings. The Shareholder Representative shall meet at least once annually, no later than June 1st, for the purpose of appointing Corporation Directors, approving the Corporation's annual business plan and budget, and transacting any other business that may be presented. If the Directors are not appointed on the date scheduled for any regular meeting of the Shareholder Representative, or at any adjournment thereof, the Board of Directors shall cause the appointments to be made at a special Shareholder Meeting as soon thereafter as is convenient.
- D. Special Meetings. Unless otherwise prohibited by applicable law, Special Shareholder Meetings may be called by the Nation's Chairman or a majority of the Directors, for any purpose or purposes. Special meetings shall require written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered not less than five (5) days before the date of the meeting, either personally or by mail, to each of the Directors of the Corporation, and to each individual

serving as the Shareholder Representative. Individuals who do not wish to receive such notice may waive this right at any time through a written instrument delivered to the Board of Directors.

- E. Meeting Procedures. At all Shareholder Meetings, whether a regular meeting or a special meeting, the individuals serving as the Shareholder Representative shall sit in their capacity as the sole shareholder of the Corporation, and not in their capacity as government officials of the Nation. Matters within the scope and legal authority of the Owner under this Charter shall only be discussed and decided by the Shareholder Representative at a Shareholder Meeting duly called as provided in this Charter. On any issue or question presented to the Shareholder Representative, a vote shall be taken of those individuals present. Unless otherwise provided under tribal law, the Shareholder Representative shall act by majority vote.
- F. Limited Authority. Unless otherwise provided in this Charter, the Shareholder Representative shall have no authority to direct the day-to-day operations of the Corporation, including, but not limited to: the hiring, firing, and supervision of employees; the selection of vendors; advertising and marketing; and other activities undertaken by the Corporation in the ordinary course of business. This Charter shall be construed so as to limit the Shareholder Representative's involvement in the business activities of the Corporation.

ARTICLE XI – BUDGET AND FINANCES

- A. Operating Budget and Annual Plan. On or before June 1st of each year, the Board shall prepare and submit a proposed Operating Budget and Annual Plan for the ensuing full or partial operating period ("Fiscal Year") to the Shareholder Representative for approval. The Operating Budget and Annual Plan shall include a projected income statement, balance sheet, and projection of cash flow for the business operations conducted under this Charter, with detailed justifications explaining the assumptions used therein. The Operating Budget and Annual Plan shall include a schedule of repairs and maintenance (other than Capital Replacements), a business and marketing plan for the Fiscal Year, and the Minimum Balance, which must remain in the Business Bank Accounts as of the end of each month during the Fiscal Year to assure sufficient funds for operating capital purposes, and other expenditures authorized under the Operating Budget and Annual Plan. Adoption of the final Operating Budget and Annual Plan for each Fiscal Year shall be effective upon approval by the Shareholder Representative.

The Operating Budget and Annual Plan shall include the following:

1. A statement of the estimated income and expenses for the coming Fiscal Year, including estimates as to Gross Revenues and Operating Expenses for such Fiscal Year, and estimates of the anticipated results of the operation during each month of the subject Fiscal Year;

2. Budgets for:

- a. Repairs and maintenance;
- b. Capital Replacements;
- c. General Capital Reserve
- d. Furnishings and equipment;
- e. Advertising and business promotion programs for the Business;
- f. The estimated cost of promotional allowances; and,
- g. Any other items requested by the Board or Tribal Council; and,

3. A business and marketing plan for the subject Fiscal Year.

The Shareholder Representative may request additional or alternative budget presentation formats or information, which the Board shall timely provide upon such request.

- B. Consideration by Shareholder Representative. The Board shall meet with the Shareholder Representative to discuss the proposed Operating Budget and Annual Plan within ten (10) business days of its delivery to the Shareholder Representative. The Shareholder Representative shall be deemed to have approved the Operating Budget and Annual Plan, unless a specific written objection thereto is delivered to the Board within forty-five (45) days after the Board has delivered the proposed Operating Budget and Annual Plan to the Shareholder Representative. In the event that the Shareholder Representative declines to meet with the Board to discuss the proposed Operating Budget and Annual Plan, the Shareholder Representative shall be deemed to have ratified the proposed Operating Budget and Annual Plan, unless a specific written objection is delivered to the Board within forty-five (45) days after the date the proposed Operating Budget and Annual Plan is submitted to the Shareholder Representative. To be effective, any notice which disapproves a proposed Operating Budget and Annual Plan must contain specific objections which address individual line items in reasonable detail.
- C. Adjustments to Operating Budget and Annual Plan. The Board may request revisions to the Operating Budget and Annual Plan from time to time, as necessary, to reflect unpredicted or unanticipated changes in circumstance. These revisions shall be in effect upon approval by the Shareholder Representative.
- D. Capital Budgets. On or before June 1st of each year, the Board shall submit a recommended capital budget ("Capital Budget") to the Shareholder Representative for its approval. The Capital Budget shall describe the present value, estimated useful life, and estimated replacement costs for the ensuing full or partial year, as the case may be, for the physical plant, furnishings, equipment, and ordinary capital replacement items, all of which are defined to be any items, the cost of which is capitalized and depreciated, rather than expensed, using GAAP ("Capital Replacements") as shall be required to operate the Business in accordance with sound practices. The Shareholder Representative and the Board shall meet to discuss the proposed Capital Budget in the same manner and within the same time

periods specified for the Operating Budget and Annual Plan. Approval, disapproval, and or objections shall be provided in the same manner and within the same time periods specified for the Operating Budget and the Annual Plan. Unless the Shareholder Representative and the Board otherwise agree in writing, the Board shall be responsible for the design and installation of Capital Replacements.

- E. Capital Replacement Reserve. The Board shall establish a Capital Replacement Reserve on the books of account of the Business, and the periodic contributions of cash required shall be deposited by the Business into an account ("Capital Replacement Reserve") established in the Business's name. All amounts in the Capital Replacement Reserve shall be invested in interest bearing investments in accordance with a written Business Investment Policy to the extent that the availability of funds, when required, is not impaired. Interest earned on amounts deposited in the Capital Replacement Reserve shall be credited to the Capital Replacement Reserve and shall be available for payment of expenditures for Capital Replacements to any facility. The Business shall draw on the Capital Replacement Reserve for Capital Replacements to purchase those items included in the Capital Budget approved by the Shareholder Representative.
- F. Contributions to Capital Replacement Reserve. The Business shall, to the extent funds are generated and available therefore, make monthly deposits into the Capital Replacement Reserve in amounts equivalent to depreciation expenses.
- G. General Capital Reserve. The Board may establish a general capital reserve fund out of the earned surplus of the Corporation as may be necessary, in its discretion, to provide for contingencies and working capital, to reasonably mitigate negative market impacts, to reinvest in the business of the Corporation, or for any other purpose deemed beneficial to the Corporation.
- H. Approval of Contracts Required. Any contract requiring an expenditure by the Business in excess of \$250,000 shall be approved by the Shareholder Representative prior to execution. Such contracts must be expressly approved; the approval of the Shareholder Representative may not be inferred based upon its approval of the Operating Budget and Annual Plan or the Capital Budget.
 - a. The Shareholder Representative's approval of the Operating Budget and Annual Plan, the Capital Budget, or any Contract, shall not be deemed to limit, modify, or waive the Nation's sovereign immunity from suit; nor shall such approval by the Shareholder Representative be deemed to obligate or encumber any of the Nation's funds or property.
 - b. Prior to the execution of any contract requiring approval under this Article, the Corporation shall issue a written disclosure to all other parties to the contract that the Corporation is not authorized to limit, modify, or waive the Nation's sovereign immunity from suit, and may not obligate or encumber any of the Nation's funds or

property, and that the Shareholder Representative's approval of any contract does not affect this limitation.

ARTICLE XII – BOARD OF DIRECTORS

- A. Management Authority. A Board of Directors (Board) shall provide management oversight for the Corporation's activities, and shall establish the governing policies of the Corporation in consultation with the Shareholder Representative.
- B. Number and Composition. The Board shall consist of five (5) voting members, which shall be appointed by the Shareholder Representative. The Nation's Chairman and the Speaker of the House, or their respective designees, shall sit as non-voting members of the Board of Directors.
- C. Term as Directors. The initial terms of office of the voting members of the Board shall be staggered so that two of them are two years and three of them are four years. After the initial terms, the general terms of office for their positions shall be four years. Following the initial terms, the general terms of office for each Director shall be four years.
- D. Qualifications. Each voting member of the Board of Directors shall be at least twenty-five (25) years of age. Following the expiration of all of the initial terms of office, at least one voting member of the Board of Directors shall be a member of the Nation. Members of the Board of Directors shall have a reputation for integrity and honesty, shall be eligible to receive a valid gaming license under applicable law, and shall also possess at least three (3) of the following qualifications:
 - a. A four-year degree from an accredited college or university;
 - b. Demonstrable experience in business administration, business management, and personnel management;
 - c. Demonstrable experience in the gaming, hospitality, or entertainment industry;
 - d. Demonstrable experience working with Indian tribes or tribally-owned businesses;
 - e. Specialized training or education relating to the Corporation's business activities;and,

Members of the Nation's Executive, Judicial, and Legislative branches, employees and agents of the Nation's Gaming Commission, employees of the Corporation, members of the Board of Directors of ACE, Inc., employees of ACE, Inc., and individuals convicted of a felony offense or crime involving theft or dishonesty in any tribal, federal, or state court in the previous ten (10) years, may not serve as voting members of the Board of Directors.

The Shareholder Representative shall endeavor to appoint members of federally recognized Indian tribes to the Board, subject to the qualifications established in this Article.

- E. Responsibilities of Directors. Members of the Board of Directors shall owe a fiduciary responsibility to the Corporation and the Nation, as its owner, and shall perform their duties in good faith. The Board is responsible for managing and overseeing the Corporation, and shall exercise such powers necessary to carry out the purposes of the Corporation; provided, these powers shall not extend to the Corporation's day-to-day operations.
- F. Liability of Directors. A Director shall not be personally liable to the Corporation or the Owner for monetary damages for breach of his or her fiduciary responsibility, except where:
 - 1. the Director has breached or failed to perform the duties of the Director's office as provided herein, and
 - 2. the breach or failure to perform constitutes willful misconduct or recklessness.
- G. Conflicts of Interest. Directors may not engage in the following activities, which shall be deemed a conflict of interest:
 - 1. Making campaign contributions from the Corporation's funds or seeking and obtaining reimbursements from the Corporation for campaign contributions;
 - 2. Engaging in any gambling activities at any business owned by the Corporation or the Nation;
 - 3. Accepting any gift, gratuity, or thing of more than nominal value from a party contracting or seeking to contract for matters pertaining to the Corporation's business activities;
 - 4. Voting on any issues in which the member has a material financial interest or where the matter affects an immediate member of the Director's family; provided, to the extent that questions exist regarding whether an issue will impact a familial relationship of a member of the Board, the remaining members of the Board may vote by secret ballot to authorize the Board member to vote on that issue.
- H. Noninterference in the Nation's Affairs. The Corporation, its Directors, employees, and agents, shall refrain from interfering in the Nation's Affairs. The following activities will be deemed to interfere in the Nation's Affairs:
 - 1. Attempting to influence the decisions of the Nation's government officials by offering cash incentives, making written or verbal threats, or attempting to influence the decisions of the Nation's government through other coercive means;

2. Attempting to transfer any thing of value to any member of the Nation's government, or a relative of a member of the Nation's government, or to any employee of the Nation for the purpose of obtaining a special privilege; provided, gifts provided in relation to ceremonies, social events and gatherings, or family events shall be presumed not to have been provided for the purpose of obtaining a special privilege;
3. Engaging in political activities while carrying out the duties owed to the Corporation;
4. Employing an officer or employee of the Nation's government at the Corporation or its businesses; and,
5. For any voting Director, or the three (3) highest paid employees of the Corporation, making financial or in-kind contributions to any political candidate.

This section shall not be construed to prohibit any of the Nation's members from voting or expressing support for any candidate for political office; provided, such actions are undertaken in the member's individual capacity, and not on behalf of the Corporation.

- I. Board Meetings. The Board shall conduct at least one annual meeting on or before June 1st of each year on the Reservation. The Board may conduct such other regular or special meetings as may be called by the Board Chairman or any two Directors.
- J. Notice of Meeting. Notice of meetings, other than the regular annual meeting, shall be given by service upon each Director in person orally at a preceding meeting, or by mailing to the last known post office address of the Director, at least five days before the date therein designated for such meeting, including the day of the mailing, of a written or printed notice thereof specifying the time and place of such meeting, and the business to be brought before the meeting. At any meeting at which at least five of the members of the Board shall be present, although held without notice successfully given to all Directors, any business may be transacted which might have been transacted if the meeting had been duly called with notice to all Directors. Notices of meetings may also be given by any other means at least as effective and expeditious as mailing. Attendance at a meeting is a waiver of any notice requirements.
- K. Quorum. At a meeting of the Board, a quorum shall consist of three voting members of the Board. The Board Chairman shall count towards the establishment of a quorum. In the event of a quorum not being present, a lesser number may adjourn the meeting from time to time without further notice.
- L. Voting. At a meeting of the Board, each Director shall have one vote. The Board Chairman may vote only in the event of a tie. A majority of those present shall carry any issue.

- M. Presumption of Assent. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action, unless such dissent shall be entered in the minutes of the meeting or unless the Director shall file a written dissent to such action with the Board before the meeting adjourns. A Director may abstain from voting only on those matters in which a bona fide conflict of interest exists.
- N. Director Compensation. Subject to applicable tribal and federal law, Directors shall receive such expense reimbursement, stipend, salary or compensation as may be determined reasonable and appropriate by the Board. The Board shall disclose to the Nation each Director's compensation and reimbursements. The Nation's Constitution prohibits the Nation's elected officials from receiving compensation for serving as non-voting members of the Board.
- O. Removal of Directors. The Shareholder Representative may remove a Director for the following reasons:
1. Failure to attend more than three consecutive scheduled and properly noticed meetings in any period of more than thirty (30) days, unless such absences are excused by a majority of vote of non-interested Directors;
 2. Gross misconduct or gross abuse of authority or discretion;
 3. Becoming physically, mentally, or legally incapable of performing his or her duties for a period of not less than 90 days; or,
 4. Discovery that a Director is ineligible for membership on the Board pursuant to this Article.

Upon reasonable notice of such an offense, the Board shall immediately remove any Director who is convicted in any tribal, federal, or state court for a felony offense or other offense involving theft or dishonesty, or any Director who is ineligible to receive or maintain a valid gaming license under applicable law.

Any Director subject to a removal action shall, before a vote is taken, be provided a written notice of the basis for such removal at least ten days in advance of a proposed removal action. Upon such notice, the Director may provide the Shareholder Representative with a written reply to such charges. Appointment to the Corporation's Board of Directors does not establish a property interest, and the Shareholder Representative's decision to remove a Director is not reviewable by any court.

- P. Vacancies. Whenever any vacancy shall occur in the Board by any reason, the Shareholder Representative shall appoint a Director to fulfill the remainder of the term of the Director who has vacated the Board.

ARTICLE XIII – OFFICERS

- A. Number and Positions. The officers of the Board shall be the Chairman, Vice-Chairman, the Secretary, and the Treasurer. The members of the Board shall elect a Chairman and a Vice-Chairman. The Board Chairman shall preside over all Board meetings. The Board Vice-Chairman shall assume the duties of the Chairman in the absence of the Chairman. The Board shall also elect a Treasurer and Secretary. No two persons may hold more than one Board position, except that the same person may serve as both Secretary and Treasurer. Non-voting members of the Board may not serve as officers, except the Board may elect to appoint a non-member of the Board to serve as the Treasurer for both the Board and the Corporation.
- B. Election. All officers of the Board shall be elected annually, at the Board's annual meeting, and shall hold office for a term of one year, or until their successors are duly elected. The first set of Officers shall be elected at an organizational meeting of the Board, which shall be held within 180 days of the ratification of this Charter.
- C. Duties of Officers. The duties and powers of the officers of the Board shall be as provided in the Bylaws.
- D. Compensation. Subject to applicable tribal and federal law, the Officers shall receive such expense reimbursement, salary, or compensation as the Board may determine to be reasonable and necessary. The Nation's Constitution prohibits the Nation's elected officials from receiving compensation for serving as non-voting members of the Board.
- E. Resignation and Removal of Officers. Any officer may resign his or her position as an officer of the Board at any time by giving written notice to the Chairman of the Board, or to the Secretary of the Board if the Chairman is not available. Such resignation shall be effective on the date specified in the notice. Except as may be otherwise provided in the Bylaws, any Officer may be removed from his position as Officer either with or without cause at any time, by a majority vote of the Board at any special meeting called for that purpose, or at the annual meeting. This Charter, or any Bylaws adopted hereunder, shall not be deemed to convey a property interest in any Board position.
- F. Vacancies. All vacancies in any office specified in Section A of this Article shall be filled by the Board for the unexpired portion of the term without undue delay, at its regular meeting or at a meeting specially called for that purpose.

ARTICLE XIV – INDEMNIFICATION

- A. Indemnification. The Corporation shall indemnify any current or former Director, officer or employee against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being, or having been, such Director, officer or employee of the

Corporation, and the reasonable costs of settlement of any such action or proceeding. If the majority of Board members are not seeking indemnification or otherwise involved in the controversy then the majority shall determine in good faith:

1. That such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent; and
 2. That any legal fees paid or any settlements made are reasonable; and
 3. That the person seeking indemnification did not act beyond the scope of his or her employment or office; and
 4. That it is in the best interests of the Corporation that indemnification be made.
- B. Advance and Repayment. The Board may provide such indemnification in advance of the final disposition of such an action; provided, the Director shall repay such funds to the Corporation if it is ultimately determined that he or she is not entitled to be indemnified pursuant to this Article. The Board may establish terms and conditions for the repayment of any funds advanced under this section.
- C. Board unable to act. If the Board is unable to act on a request for indemnification due to lack of disinterested quorum, the decision whether to indemnify shall be submitted to the Shareholder Representative.
- D. Not Exclusive. The indemnification and advancement of expenses provided in this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, agreement, vote of disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office.
- E. Insurance. By action of the Board, notwithstanding any interest of the Directors in the decision to purchase and maintain insurance, the Corporation shall purchase and maintain insurance, in such amounts as the Board deems appropriate, on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, against any liability asserted against such a person and incurred by such a person in any such capacity, or arising out of that person's status as such.
- F. Continuing Effect. The indemnification of expenses pursuant to this Article shall continue as to a person who has ceased to be a Director, Officer, employee or agent, and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless such funds were otherwise provided when authorized or ratified.

ARTICLE XV – DISTRIBUTIONS TO THE NATION

- A. Regular Distributions. The Board will make regular monthly distribution to the Nation's government from the surplus profits of the Business, which are its revenues after all expenses, which expenses include loan repayments and capital expenditure requirements. The Board shall not make any distributions:
1. Until the funding of General Capital Reserve funds that the Board, in its sole discretion, determines are sufficient for working capital and reinvestment; provided, any such capital reserve funds are in amounts reasonably necessary to serve the best interests of the Corporation;
 2. If the Corporation would not be able to pay its debts as they become due in the usual course of business; or,
 3. If the Corporation's total assets and any other assets subject to the Corporation's liabilities would be less than the sum of its total liabilities.
- B. Distributions to Nation. All distributions shall be paid to the Nation as the owner of the Corporation.

ARTICLE XVI – REPORTS TO OWNER

- A. Generally Accepted Accounting Principles. The Corporation shall maintain its financial records in conformity with generally accepted accounting principles.
- B. Report to the Nation. The Board of the Corporation shall, no less frequently than on a quarterly basis, report in writing to the Shareholder Representative on the financial and operating condition of the Corporation, including the assets and liabilities of the Corporation and the official actions of the Corporation's directors, officer, and employees. The content of the report shall be determined jointly by the Chairman of the Board, and the Shareholder Representative.
- C. Inspection. The financial and operating records of the Corporation shall at all reasonable times be open to inspection by the Shareholder Representative.
- D. Audited Statement. The Corporation shall, within 120 days following the close of the Corporation's fiscal year, submit to the Shareholder Representative an audited financial statement showing the status of the Corporation as of the last day of the Corporation's fiscal year.
- E. Confidentiality. Any information pertaining to the Corporation's business may be kept from disclosure in the event that it constitutes confidential or privileged commercial information or its disclosure would harm the Corporation or the Nation, subject to the direction of the Shareholder Representative.

ARTICLE XVII – DISSOLUTION

- A. Dissolution at any time. After issuance of this Charter by the Secretary of the Interior and ratification by the Nation, the business of the Corporation may be suspended or the Corporation dissolved only as provided in this Article.
- B. Manner of dissolution. The business of the Corporation may be suspended and/or the Corporation dissolved as follows:
1. The Board shall adopt a resolution recommending that the business of the Corporation be suspended and/or the Corporation dissolved and directing that the question of suspension and dissolution be submitted to a vote of the Nation's Legislature.
 2. Written notice shall be given to the Shareholder Representative in the manner provided in Article X of this Charter, and shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of the action proposed.
 3. The Nation shall decide whether to suspend the business of the Corporation, or dissolve the Corporation, in accordance with tribal law.
 4. Upon adoption of the resolution to suspend business and/or to dissolve, a statement of intent to suspend business and/or dissolve shall be executed by the Corporation by its Chairman or Vice-Chairman and by its Secretary and verified by one of the officers signing the statement, and shall be delivered to the Secretary of the Interior.
 5. Upon filing with the Secretary of the Interior of the statement of intent to suspend business and/or dissolve, the Corporation shall cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence shall continue until this Charter is revoked by act of Congress in accordance with 25 U.S.C. § 477, as amended.
 6. After filing the statement of intent to suspend business, the Corporation shall follow the procedures provided in the bylaws.
 7. After filing the statement of intent to dissolve, the Corporation shall immediately cause notice thereof to be mailed to each known creditor of the Corporation; shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its Shareholder, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to its Shareholder.

8. By resolution of the Board or by resolution adopted by the Nation in accordance with tribal law, at any time prior to revocation of this Charter by act of Congress, the Corporation may revoke voluntary dissolution proceedings. Written notice of the revocation shall be filed with the Secretary of the Interior. Upon filing the notice of revocation of voluntary dissolution proceedings, the revocation shall be effective and the Corporation may again carry on its business.
9. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the Corporation have been distributed to the Owner, the Nation and the Secretary of the Interior shall take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

ARTICLE XVIII – AMENDMENTS

The authority to petition for amendments to this Charter is vested in the Nation, but such amendments shall have no legal effect until approved by the Secretary of the Interior and ratified by the Nation's Legislature and Chairman in accordance with 25 U.S.C. § 477, as amended, and in accordance with applicable Tribal law.

The Board may request the Nation to petition the Secretary of the Interior for amendments to this Charter, but the final decision on submitting any such petition shall be made by the Nation, acting pursuant to its own laws and procedures.

ARTICLE XIX – INDIAN GAMING REGULATORY ACT

One of the Corporation's primary purposes is to operate gaming facilities in accordance with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. Where applicable, the Corporation shall comply with the Indian Gaming Regulatory Act (IGRA) and any regulations adopted thereunder, as they may be amended. To the extent that there is a conflict between this Charter and IGRA, including its attendant regulations governing the conduct, ownership, and management of a gaming operation, IGRA shall control. With respect to the Corporation's gaming activities, this Charter should be read to comply with applicable federal law.