

IN THE DISTRICT COURT OF CADDO COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
CADDO CO.
FILED
SEP 12 2011
At _____ O'Clock _____ M.
OBAL GAROL FINCH, Court Clerk
By *[Signature]*

APACHE TRIBE OF OKLAHOMA,)
)
 Plaintiff,)
)
 vs.)
)
 TGS ANADARKO, LLC and WELLS)
 FARGO BANK, national association,)
)
 Defendants.)

Case No. CJ-2011-108

**APPLICATION FOR STAY OF ARBITRATION
PROCEEDINGS AND PRELIMINARY INJUNCTION**

Plaintiff Apache Tribe of Oklahoma moves the Court for a stay of an arbitration between the parties and a preliminary injunction restraining any further proceedings in the arbitration, pending this Court's final determination of the issues raised by the Tribe

INTRODUCTION

Under the Apache Tribal Constitution, the Apache Tribal Council (also known as the General Council) is the supreme governing body of the Tribe. The Apache Business Committee has only such powers as may be delegated to it by appropriate resolutions of the Tribal Council, and may transact business only within such delegated authority.

In December 2007, the Apache Tribe's Business Committee passed a resolution approving an Equipment Lease Agreement with an entity called KAGD. The Equipment Lease Agreement was for gaming machines to be placed in the Apache Tribe's Silver Buffalo Casino in Anadarko. The Equipment Lease Agreement contained a waiver of sovereign immunity and a consent to arbitration of disputes. The Equipment Lease Agreement and its provisions – including the waiver of sovereign immunity and consent to arbitration – were never approved by the Apache Tribal Council. And the Apache Tribal Council has never passed a resolution giving

EXHIBIT
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the Business Committee the authority to waive the Tribe's sovereign immunity or to consent to arbitration of disputes.

The Equipment Lease Agreement was eventually assigned by KAGD to TGS Anadarko, which in turn assigned it to Wells Fargo. After experiencing performance issues, the Tribe quit making lease payments under the Equipment Lease Agreement and began the process of replacing the machines covered by the lease.

TGS and Wells Fargo claim the Tribe has breached the Equipment Lease Agreement, and in May 2011 they initiated an arbitration against the Tribe. The Tribe filed an Answering Statement in which it asserted, among other things, that it did not validly waive its sovereign immunity or consent to arbitration. While the parties have engaged in the process of selecting arbitrators, no arbitrators have yet been appointed.

Under Oklahoma law this Court should stay the arbitration proceedings while it determines whether this Court or an arbitrator can exercise subject matter jurisdiction over the Tribe. *See Oklahoma Oncology & Hematology P.C. v. U.S. Oncology, Inc.*, 2007 OK 12, ¶22 (“to assure that the parties have consented to arbitration, the courts will decide whether there is a valid enforceable arbitration agreement, whether the parties are bound by the arbitration agreement, and whether the parties agree to submit a particular dispute through arbitration.”); *Thompson v. Bar-S Foods Co.*, 2007 OK 75, ¶21, 174 P.3d 567 (“it is the Court’s role to determine whether a valid enforceable agreement to arbitrate the dispute exists.”).

Moreover, under the recent Oklahoma Supreme Court decision in *Dilliner v. Seneca-Cayuga Tribe*, 2011 OK 61, this Court should hold that the Tribe has not waived its sovereign immunity or otherwise consented to suit. “Absent an effective waiver or consent, a state court may not exercise jurisdiction over a recognized Indian tribe.” *Id.*, at ¶12. This Court must look

to tribal law to determine jurisdiction, *id.* at ¶13, and under Apache tribal law only the Tribal Council can waive sovereign immunity. Because the Tribal Council did not waive sovereign immunity with respect to the Equipment Lease Agreement, the Tribe is not subject to the claims of TGS and Wells Fargo.

BACKGROUND FACTS

1. The Apache Tribe is a sovereign, federally recognized Indian tribe governed by a Constitution. Ex. 1 (Apache Tribal Constitution).

2. Under Article III of the Apache Constitution, “[t]he supreme governing body of the Apache Tribe of Oklahoma shall be the tribal council.” (The Tribal Council is also sometimes referred to as the General Council.) The Tribal Council consists of all members of the Apache Tribe 18 years of age and older. Ex. 1.

3. Article V of the Apache Constitution provides for a five member Business Committee which “shall have such powers as may be delegated to it by appropriate resolutions of the tribal council, and, within such delegated authority, may transact business or otherwise speak or act on behalf of the tribe in all matters on which the tribe is empowered to act now or in the future.” *Id.*

4. Article XV of the Apache Constitution provides that 50 members of the Apache Tribal Council constitutes a quorum to transact business at a Tribal Council meeting. *Id.*

5. On December 7, 2007, the Apache Tribe’s *Business Committee* passed a resolution approving and entering into an Equipment Lease Agreement with an entity called KAGD. A copy of the Equipment Lease Agreement is attached at Exhibit 2.

6. The Equipment Lease Agreement approved and entered into by the Business Committee contains a waiver of sovereign immunity by the Apache Tribe, and a provision

requiring arbitration of disputes between the parties. Ex. 2, Sec. 22. Section 22(f) provides, in part:

The Tribe hereby expressly and irrevocably waive, and also waive its right to assert, sovereign immunity and any and all defenses based thereon with respect to any claims; and the Tribe hereby consent to (i) binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, (ii) empowering the arbitrators to take the actions and enforce the judicial remedies described in their Resolution of Limited Waiver of Sovereign Immunity dated December _____, 2007 (attached hereto as Exhibit A) adopted by the Tribe in connection with approving the execution of this Agreement, and (iii) judicial proceedings in or before the United States District Court in which the Project is located, the United States Court of Appeals having jurisdiction over the applicable District Court, and the United States Supreme Court, for the purpose of compelling arbitration or enforcing any arbitration award, orders or judgment arising out of this agreement

There is no "Resolution of Limited Waiver of Sovereign Immunity dated December _____, 2007" attached as Exhibit A to the Equipment Lease Agreement, nor does such a Resolution passed by the Apache Tribal Council (or the Business Committee, for that matter) exist.

7. Under Apache tribal law, only the Tribal Council, as the supreme governing body, may waive sovereign immunity or consent to suit, or delegate that authority by an appropriate resolution expressly delegating to the Business Committee the authority to waive sovereign immunity or consent to suit. Ex. 1.

8. The resolution of the Business Committee which purported to approve the Equipment Lease Agreement with KAGD (and the waiver of sovereign immunity and arbitration provisions) states it was enacted under the authority of Apache Tribal Council Resolutions 73-1 and 78-7. Resolution 73-1, passed on August 26, 1972, provides:

WHEREAS, The Apache Tribe meeting in a general council this 26th day of August, 1972, and

WHEREAS, It now has come to the attention of the tribe to delegate more authority to the Apache Tribal Business Committee.

NOW THEREFORE BE IT RESOLVED: That the tribe does hereby go on record to delegate its full and complete authority to the Business Committee to transact any and all business related to the tribe involving matters such as tribal land, tribal budget and any other tribal matters relating to government programs and the Bureau of Indian Affairs. FURTHER: That the Land Use Committee of the Apache Tribe is hereby dissolved, since above authority is now delegated to the business committee.

Ex. 3. Resolution 78-7, passed September 10, 1977, provides:

WHEREAS, The General Council of the Apache Tribe recognizes the need for the Business Committee to have some authority, and needs this authority without the necessity of calling a General Council to act on business for the Tribe. According to Article V of the Apache Constitution of the Apache Tribe of Oklahoma and,

WHEREAS, The Apache Tribe of Oklahoma does hereby go on record similar to Resolution 73-1 to delegate authority to transact business related to the Apache Tribe of Oklahoma

NOW THEREFORE BE IT RESOLVED that this foregoing Resolution will go on record for the Business Committee.

Ex. 4. Neither of these resolutions grants the Apache Business Committee the authority to enter into an equipment lease agreement for gaming equipment for a casino (which, of course, did not exist in the 1970s and was not even contemplated in the 1970s, as the Indian Gaming Regulatory Act did not come into existence until years later), and more importantly neither of these resolutions grants the Business Committee the authority to waive the Tribe's sovereign immunity or consent to arbitration in a business transaction.

9. Wells Fargo and its counsel agreed that Resolutions 73-1 and 78-7 do not waive sovereign immunity nor grant the Business Committee the authority to waive sovereign immunity, and that General Council approval of the waiver of sovereign immunity is necessary for any waiver to be valid. In connection with entering into its own loan transaction with the Apache Tribe (which loan transaction included taking an assignment of the Equipment Lease Agreement), on April 1, 2008, Wells Fargo attorney Sean McGinnis wrote:

One of the issues we briefly discussed was authority for the Business Committee to enter into the Loan Documents and associated waiver of sovereign immunity. As you know, this morning we received copies of resolutions 73-1 (passed in 1973) and 78-7 (passed in 1978) of the General Council of the Apache Tribe of Oklahoma. Our review of the resolutions found that the resolutions lack specificity with regard to this loan transaction and do not explicitly include the authority for the Business Committee to waive sovereign immunity of the Tribe. Additionally, we note that the authorizing language does not appear to be included in the 1987 Amendment to the Tribe's Constitution. In addition, these obviously predate the enactment of IGRA and modern-day Indian gaming. After discussions with Wells Fargo, our client strongly feels that approval by the General Council of the Tribe is necessary for the approval of the Loan Documents and included waiver of sovereign immunity.

Ex. 5.

10. Neither the Equipment Lease Agreement, nor the provisions waiving sovereign immunity and requiring arbitration, were approved by the Apache Tribal Council, and there is no resolution from the Tribal Council delegating to the Business Committee the authority to waive sovereign immunity or consent to arbitration of disputes.

11. On June 23, 2008, KAGD assigned its interest in the Equipment Lease Agreement to TGS Anadarko. Ex. 6. On that same date, TGS Anadarko assigned its interest in the Equipment Lease Agreement to Wells Fargo. Ex. 7.

12. On May 17, 2011, TGS and Wells Fargo initiated an arbitration proceeding against the Apache Tribe with the American Arbitration Association. Ex. 8. TGS and Wells Fargo claim the Apache Tribe has breached the Equipment Lease Agreement, and seek money damages, a return of the gaming equipment, and other relief against the Tribe.

ARGUMENT AND AUTHORITIES

PROPOSITION I. The Tribe did not validly waive its sovereign immunity, and therefore neither the Arbitrator nor this Court has jurisdiction over the Tribe.

A federally-recognized Indian tribe has sovereign immunity from suit, which is a matter of federal law and may not be diminished by the states. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 756. “As a matter of federal law, an Indian tribe is subject to suit only if Congress has authorized the suit or the tribe has waived its immunity.” *Id.* at 754. The United States Supreme Court has made it clear that a tribe’s waiver of sovereign immunity must be unequivocally expressed, and “cannot be implied” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978).

Recently the Oklahoma Supreme Court reaffirmed these principles, and stated that “[a]bsent an effective waiver or consent, a state court may not exercise jurisdiction over a recognized Indian tribe.” *Dilliner v. Seneca-Cayuga Tribe*, 2011 OK 61, ¶12. In order to determine whether there is an effective waiver or consent, “[c]ourts have looked at tribal law in determining jurisdiction.” *Id.*, ¶ 13.

The *Dilliner* Court cited cases such as *Sanderlin v. Seminole Tribe of Florida*, 243 F.3d 1282 (11th Cir. 2001), to demonstrate that the court must look to tribal law to determine whether an attempted waiver of sovereign immunity is effective. *Id.*, at ¶14. In *Sanderlin*, the Eleventh Circuit rejected the theory that the tribe’s chief had actual and apparent authority to waive sovereign immunity because it would violate the tribe’s constitution. 243 F.3d at 1288. *See also World Touch Gaming, Inc. v. Massena Mgmt., LLC*, 117 F.Supp.2d 271, 276 (N.D.N.Y. 2000) (tribal executive’s signature did not waive sovereign immunity when that right was reserved for the tribal council); *Danka Funding Co. v. Sky City Casino*, 747 A.2d 837, 841-42, 844 (N.J. 1999) (same).

In *Dilliner*, the Seneca-Cayuga Tribe's Constitution provided that the Business Committee of the Tribe has the power to transact business and speak or act on behalf of the Tribe in all matters in which the Tribe is empowered to act. *Id.*, ¶2. In a poll vote, the Seneca-Cayuga Business Committee voted in favor of a resolution styled: "Authorization for Chief to Sign a Three Year Employment Agreement with Tribal Employees." This resolution did not mention the waiver of sovereign immunity. The Chief signed employment contracts between the Tribe and tribal employees for terms of three years. The employment contracts contained a limited waiver of sovereign immunity. The Supreme Court rejected the employees' contention that the Business Committee's grant of authority to the Chief to sign the employment contracts gave the Chief the authority to waive sovereign immunity in the contracts:

¶19 Plaintiffs ask us to conclude that, because the Business Committee granted authority to Chief Spicer to sign employment contracts with tribal employees for three year terms at their current positions and salaries, those contracts must have been approved and ratified in all particulars, including the limited waiver of sovereign immunity. We do not agree with plaintiffs' position. Federal law requires that the waiver of sovereign immunity be express and unequivocal; it cannot be implied. The Tribe's Constitution and By-Laws do not authorize the Chief to waive the Tribe's sovereign immunity.

¶20 Waiver of sovereign immunity was neither expressed nor consented to in the Business Committee's resolutions that authorized the Chief to sign the employment contracts. Neither of the resolutions expressly ratified the contracts that Chief Spicer entered into: Resolution #27-072607 only authorized the Chief to sign a contract with tribal employees for a three year term, in their present positions of employment and at their present salaries; Resolution #46-081407 ratified only the resolution, not the contracts. We must conclude that under these circumstances, there was no express and unequivocal waiver of the Tribe's sovereign immunity.

2011 OK 61 at ¶¶19, 20.

So this Court must look to Apache tribal law to determine whether there was an effective waiver of sovereign immunity in the Equipment Lease Agreement. The Apache Constitution provides that "[t]he supreme governing body of the Apache Tribe of Oklahoma shall be the tribal

council.” Ex. 1, Art. III. The Apache Constitution further provides that the Business Committee “shall have such powers *as may be delegated to it by appropriate resolutions of the tribal council*, and, within such delegated authority, may transact business and otherwise speak or act on behalf of the Tribe. ...” Ex. 1, Art. V (emphasis added). In *Sanderlin*, the Eleventh Circuit analyzed a similar provision in the Seminole Tribe’s Constitution, and held that the provision required a waiver of sovereign immunity by the Tribal Council to be valid:

No authorities contained in this Constitution may be delegated by the Seminole Tribal Council to tribal officials, district councils, or associations to carry out any function for which the Tribal Council assumes primary responsibility, except by ordinance or resolution duly enacted by the Tribal Council in legal session, and excepting also those specific requirements contained in the Bylaws of the Seminole Tribe of Florida.

Sanderlin, 243 F.3d at 1286.

There is no resolution from the Apache Tribal Council authorizing the Apache Business Committee to waive the Tribe’s sovereign immunity, either in general or for this lease transaction. (In fact, there is no evidence that the Tribal Council passed *any* resolution permitting the lease transaction with KAGD.) Absent a resolution from the Tribal Council expressly authorizing the Business Committee to waive sovereign immunity, no waiver can be effective because, as the Oklahoma Supreme Court has noted, “[w]aiver of sovereign immunity cannot be implied but must be unequivocally expressed.” *Dilliner*, at ¶ 12 (citing *Santa Clara Pueblo*, 436 U.S. at 58).

The Business Committee resolution approving the Equipment Lease Agreement cited two old Tribal Council resolutions—one from 1973 and one from 1978—as its authority to approve the lease agreement and waiver of sovereign immunity. Those resolutions are attached at Exhibits 3 and 4, and are quoted in the statement of facts. *Neither of those resolutions authorize the Business Committee to waive sovereign immunity (or even to lease gaming equipment).*

Resolution 73-1 is a grant of authority specifically limited to business related to tribal land, tribal budget, and other tribal matters relating to government programs and the Bureau of Indian Affairs; nowhere is there any grant of authority for a gaming lease transaction to place games at a casino (nor could there be, as this resolution predated the Tribal-State Compact by over 30 years and the opening of the Silver Buffalo Casino by 33 years). Moreover, and more importantly, there was no express grant of authority to the Business Committee to waive sovereign immunity.

Resolution 78-7 is even more general and vague than Resolution No. 73-1, and certainly is not any more expansive than Resolution 73-1, and therefore it, too, is insufficient to grant the Business Committee the power to waive the Tribe's sovereign immunity and enter into the lease transaction. Moreover, Resolution 78-7 suffers from another constitutional infirmity – it shows on its face that it was passed by a vote of 32 for and 0 against, and therefore it does not show that a sufficient quorum was present for the resolution to be constitutionally valid. *See* Ex. 1 (Apache Constitution, Art. XV (requiring 50 members of the Apache Tribal Council to constitute a quorum to transact business at any meeting)).

Even Wells Fargo cannot seriously contend that Resolution Nos. 73-1 and 78-7 constitute effective delegation of authority by the Tribal Council to the Business Committee to waive sovereign immunity. Prior to entering into a loan agreement with the Tribe, on April 1, 2008, Wells Fargo attorney Sean McGinnis wrote:

One of the issues we briefly discussed was authority for the Business Committee to enter into the Loan Documents and associated waiver of sovereign immunity. As you know, this morning we received copies of resolutions 73-1 (passed in 1973) and 78-7 (passed in 1978) of the General Council of the Apache Tribe of Oklahoma. Our review of the resolutions found that the Resolutions lack specificity with regard to this loan transaction and do not explicitly include the authority for the Business Committee to waive sovereign immunity of the Tribe. Additionally, we note that the authorizing language does not appear to be

included in the 1987 Amendment to the Tribe's Constitution. In addition, these obviously predate the enactment of IGRA and modern-day Indian gaming. After discussions with Wells Fargo, our client strongly feels that approval by the General Council of the Tribe is necessary for the approval of the Loan Documents and included waiver of sovereign immunity.

Ex. 5. Mr. McGinnis' position is consistent with tribal, state, and federal law. There was no valid waiver of sovereign immunity in accordance with Apache tribal law. And without a valid waiver of sovereign immunity this Court does not have jurisdiction over the Tribe. *See Dilliner*, 2011 OK 61 at ¶20.

Even the Equipment Lease Agreement recognizes the need for an additional resolution to waive sovereign immunity. Section 22(f), quoted in the Statement of Facts, provides that the Tribe expressly and irrevocably waives sovereign immunity for an arbitration in a "Resolution of Limited Waiver of Sovereign Immunity dated December _____, 2007 (attached hereto as Exhibit A) adopted by the Tribe in connection with approving the execution of this agreement" There is no such resolution attached as Exhibit A to the Equipment Lease Agreement, and no such resolution was ever adopted by the Tribal Council. Thus, there simply is no valid waiver of sovereign immunity.

TGS and Wells Fargo will, no doubt, argue that the presence of an arbitration clause in the lease agreement results in a waiver of sovereign immunity, relying on *C&L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001). But the presence of the arbitration clause is not the issue; there is language in the lease agreement explicitly waiving sovereign immunity. Whether one looks at the waiver of sovereign immunity clause or the arbitration clause, the issue remains: did the Apache Tribe's Business Committee have the authority to waive sovereign immunity and consent to suit on behalf of the Tribe? And on this issue *C&L Enterprises* does not help; *the Supreme Court expressly acknowledged that issue was*

not before it and did not address it. See C&L Enterprises, 532 U.S. at 423 n.6 (“[t]he Tribe alternatively urges affirmance on the grounds that the contract is void under 25 U.S.C. §81 and that the members of the Tribe who executed the contract lacked the authority to do so on the Tribe’s behalf. These issues were not aired in the Oklahoma courts and are not within the scope of the questions on which we granted review. We therefore decline to address them.”) (emphasis added). Moreover, if *C&L* dictated such a result, then Mr. McGinnis and Wells Fargo would not have been so concerned about General Council approval in Mr. McGinnis’ e-mail attached as Exhibit 5; *C&L* was decided in 2001, and Mr. McGinnis’s e-mail and advice was in 2008.

Other courts since *C&L* have addressed this issue, however, and hold that for the arbitration clause to constitute a waiver of sovereign immunity it, too, must be authorized in conformance with tribal law. For instance, in *Lobo Gaming Inc. v. Pit River Tribe of California*, 2002 WL 922136 (Cal. App. 2002), the Court noted that in *C&L*

[t]here was no intention that the form contract, which was proposed by the Tribe itself, was not authorized, nor was there any suggestion or hint that whoever approved and executed the agreement did so improperly. Quite simply, the dispositive question raised in this case, whether the power to contract includes the power to waive immunity, was not at issue in *C&L Enterprises*, and the holding, bears no relevance to the case at hand.

Id. at *4. See also *Hydrothermal Energy Corp. v. Fort Bidwell Indian Community Council*, 170 Cal. App. 3d 489 (1985) (reversing the confirmation of an arbitration award against a Tribe because the waiver of sovereign immunity by the Chairperson of the Tribal Council was not authorized by tribal law); *World Touch Gaming*, 117 F.Supp.2d at 275-6; *Danca Funding*, 747 A.2d at 841-2.

In *Dilliner*, the Oklahoma Supreme Court relied in part on *Memphis Biofuels, LLC v. Chickasaw Nation Industries, Inc.*, 585 F.3d 917 (6th Cir. 2009). There, Chickasaw Nation Industries (a federally chartered tribal corporation) (“CNI”) entered into a contract with

Memphis Biofuels. CNI's charter required that its Board of Directors must approve any waiver of sovereign immunity. The contract had a provision expressly waiving any sovereign immunity, coupled with a "representation and warranty" that CNI's waiver was valid, enforceable, and effective. While Memphis Biofuels and CNI signed the contract, the Board of Directors of CNI did not waive sovereign immunity. CNI repudiated the agreement and Memphis Biofuels filed a demand for arbitration under the arbitration clause of the parties' contract. The Sixth Circuit looked to CNI's corporate charter, which controlled the way that sovereign immunity could be waived, and held that CNI did not expressly waive tribal sovereign immunity. Because tribal law required approval of the Board of Directors to waive sovereign immunity, and board approval was never obtained, CNI's sovereign immunity remained intact despite provisions in the contract waiving sovereign immunity and providing for arbitration. 585 F.3d at 922. *See also Dilliner*, at ¶¶15, 16.

Similarly, here only the Apache Tribal Council can waive sovereign immunity on behalf of the Tribe. And as the cases hold, this is so whether the waiver was in the form of an explicit waiver of sovereign immunity or through an arbitration or choice of law clause. So *Dilliner* controls, and without a waiver of sovereign immunity or consent to suit by the Apache Tribal Council, which, under Apache law, is required to waive sovereign immunity or consent to suit for such waiver or consent to be effective, neither this Court nor an arbitrator may exercise subject matter jurisdiction over the Tribe.

PROPOSITION II. The Court should stay the arbitration proceeding pending this Court's resolution of the jurisdictional issue.

It is for the Court to decide whether an arbitrator can exercise jurisdiction over a party. *Oklahoma Oncology & Hematology P.C. v. U.S. Oncology, Inc.*, 2007 OK 12, ¶22; *Thompson v. Bar-S Foods Co.*, 2007 OK 75, ¶21. In *Oklahoma Oncology* the Court stayed the arbitration

proceedings pending the Court's determination of whether there was a valid enforceable agreement to arbitrate. That stay lasted all the way through an appeal to the Oklahoma Supreme Court. This Court should do the same.

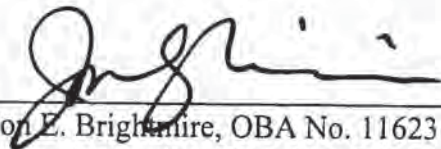
CONCLUSION

Wells Fargo and TGS have sued the Apache Tribe on an Equipment Lease Agreement. The Apache Tribe did not validly waive its sovereign immunity to a suit or arbitration on the Equipment Lease Agreement. Therefore, this Court should hold that neither it nor an arbitrator have subject matter jurisdiction over the Apache Tribe for claims arising under the Equipment Lease Agreement, and enjoin any arbitration proceedings brought by Wells Fargo and TGS on the Equipment Lease Agreement.

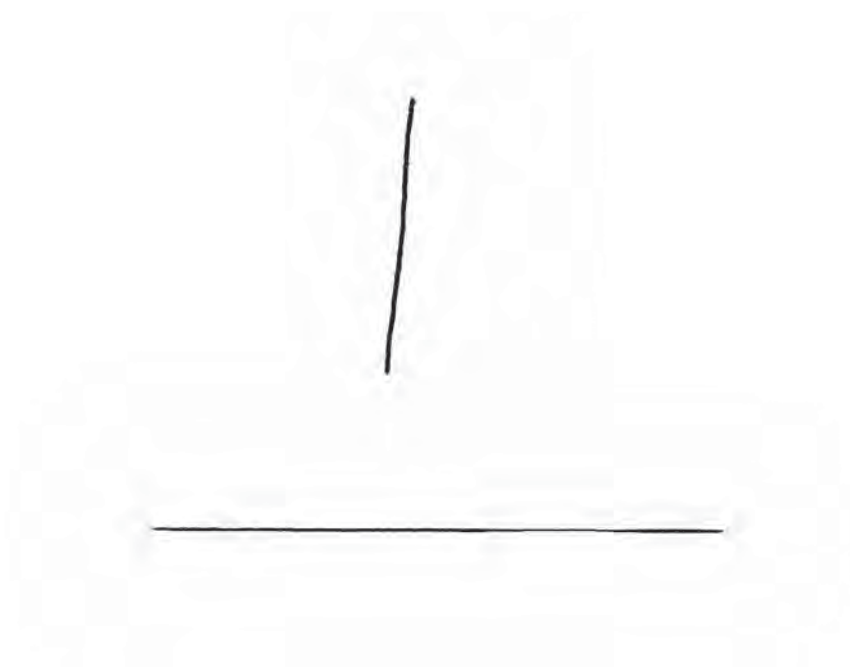
Respectfully submitted by,

DOERNER, SAUNDERS, DANIEL
& ANDERSON, L.L.P.

By: _____


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CONSTITUTION
OF THE
APACHE TRIBE
OF
OKLAHOMA
(As ratified February 5, 1972,
amended July 17, 1976
and further amended June 20, 1987)

ARTICLE I - NAME

The name of this organization shall be The Apache Tribe of Oklahoma.

ARTICLE II - MEMBERSHIP

(Pursuant to Amendments II, III, and IV, adopted 6-20-87)

Section 1. The membership of the Apache Tribe of Oklahoma shall consist of the following, provided they have not received land or money by virtue of being enrolled members of another tribe.

- (a) All persons of Apache Indian or captive blood who received an allotment of land as members of the Apache Tribe under the Act of June 6, 1900 (31 Stat. 672), and subsequent Acts, shall be included as full blood members of the Apache Tribe of Oklahoma.
- (b) All living direct descendants by blood of allottees (including captives) eligible for membership under the provisions of Section 1 (a) of this Article who possess at least one-fourth (1/4) degree Apache Indian or captive blood, as defined by and derived from Section 1 (a), shall be eligible provided they apply for membership in the Apache Tribe of Oklahoma.
- (c) All living direct descendants by blood of allottees eligible for membership under the provisions of Section 1 (a) of this Article who possess at least one-eighth (1/8) degree total Indian blood shall be eligible provided all of their Indian blood shall be counted as Apache Indian blood for the purpose of computing the eligibility of their descendants for membership in the Apache Tribe of Oklahoma.

Section 2. The business committee shall prepare and maintain a current roll of the members of the tribe based upon the rules set forth in Section 1 of this Article.

Section 3. The business committee shall have the authority to adopt ordinances with the approval of the tribal council and the Commissioner of Indian Affairs for membership and adoption.



Section 4. Persons who are enrolled as a member of another tribe shall not be eligible for enrollment with the Apache Indian Tribe if they have, by virtue of such enrollment, received benefits in land or money. Persons who are enrolled as a member of another tribe and who have not shared in that tribe's assets shall be eligible for Apache membership if they file a formal relinquishment with the other tribe.

Section 5. Notwithstanding the provisions of Article II, Section 4, involving the receipt of benefits in land or money, any person who meets the eligibility criteria of Article II, Section 1, who as a minor accepted material or monetary benefits by virtue of being a member of another tribe, shall have the option of relinquishing their membership in the other tribe and becoming a member of the Apache Indian Tribe not later than one year after they reach the age of 18 years; provided, further that any person eligible for membership in the Apache Indian Tribe must take appropriate action to enroll as a member of the Apache Indian Tribe no later than ninety (90) days subsequent to the adoption of this section.

ARTICLE III - TRIBAL COUNCIL

The supreme governing body of the Apache Tribe of Oklahoma shall be the tribal council. The tribal council shall consist of all members of the Apache Tribe eighteen (18) years of age, and older.

ARTICLE IV - OFFICERS

The officers of the tribe shall be the chairman, vice-chairman and secretary-treasurer.

ARTICLE V - BUSINESS COMMITTEE

There shall be a business committee which shall consist of the officers as provided in Article IV and two (2) members. The term of office for each officer and business committee member shall be for a period of two (2) years and until a successor is elected and certified. This committee shall have such powers as may be delegated to it by appropriate resolutions of the tribal council, and, within such delegated authority, may transact business and otherwise speak or act on behalf of the tribe in all matters on which the tribe is empowered to act now or in the future. The business committee may as it deems necessary appoint subordinate committees and representatives.

ARTICLE VI - MEETINGS

Section 1. Annual meetings of the Apache Tribal Council shall be held on the 3rd Saturday in June each year for the purpose of receiving reports and transacting any other business which may come regularly before the Apache Tribal Council.

Section 2. Special meetings of the Apache Tribal Council may be called at the discretion of the chairman, and shall be called by the chairman upon written request of fifty (50) members of the Apache Tribal Council, and shall be called upon the written request of the majority of the business committee, providing, that at least ten (10) days notice shall be given in each instance.

- (a) The principal object of a special council meeting must be stated in the notice calling the meeting and may include the words "and for the transacting of other business that may be presented;" and unless these words are added no other business may be transacted except for the object stated in the called meeting.

Section 3. The Apache Business Committee shall meet regularly once every month on the 3rd Saturday unless a quorum of the business committee shall decide to meet on another day of the month.

Section 4. Special meetings of the business committee may be called by the chairman at his discretion and shall be called by the chairman at the written request of three (3) members of the business committee.

ARTICLE VII - ELECTIONS

(Pursuant to Amendment I, adopted July 17, 1976)

Section 1. The first election of officers and committeemen under this constitution shall be held not later than sixty (60) days following its ratification. Thereafter, the general election shall be held at two (2) year intervals on the 3rd Saturday of the month during which the initial election took place. Should that day fall on a holiday the election shall take place on the following Saturday.

Section 2. Elections shall be by secret ballot and absentee voting shall be provided for. The elected officers shall take office immediately upon certification of their election. They shall serve until their successors are elected and certified.

Section 3. All elections shall be conducted according to an ordinance duly adopted by the business committee, provided that the initial one held under this constitution shall be conducted in accordance with provisions established by the Superintendent.

Section 4. In the event a valid election is not conducted by the tribe within thirty (30) days of the regularly scheduled date for such an election, the Superintendent of the Anadarko Agency is authorized to appoint five members of the Apache Tribe as an election board who shall conduct an election pursuant to rules and regulations he prescribes within 30 days of their appointment. The Superintendent is also authorized to take this action whenever it is impossible for the tribe to conduct an election for whatever reason.

ARTICLE VIII - VACANCIES

Vacancies in any elective office, except that of the chairman, shall be filled for the unexpired term at a special election to be held according to Article VII within sixty (60) days of the vacancy; provided, that if such vacancy shall have been created within six (6) months of the next scheduled election, it shall be filled by an appointee selected by the majority vote of the remaining members of the business committee to serve until the next scheduled election.

ARTICLE IX - REMOVAL OF OFFICERS

Upon the signed petition of fifty (50) members of the Apache Tribal Council, the chairman shall call a special meeting of the Apache Tribal Council to act upon complaints of misconduct in office of members of the business committee providing such complaints are supported by affidavits. The Apache Tribal Council shall have the power, by a majority vote, after giving the accused a hearing, and, if found guilty of charges, to remove him and proceed to elect a successor as provided for in Article VIII.

ARTICLE X - BILL OF RIGHTS

Section 1. All members of the Apache Tribe of Oklahoma shall enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly and association.

Section 2. These rules and regulations shall not in any way alter, abridge or otherwise jeopardize the rights and privileges of the members of the Apache Tribe of Oklahoma as citizens of the State of Oklahoma or of the United States.

Section 3. The individual property rights of any member of the Apache Tribe of Oklahoma shall not be altered, abridged or otherwise affected by the provisions of these rules and regulations without the consent of such individual member.

Section 4. The enumeration of any rights in this article shall not be interpreted to limit the rights otherwise guaranteed by the Civil Rights Act of 1968, 25 USCA 1302.

ARTICLE XI - AMENDMENTS

This constitution may be amended in the same manner by which it was adopted as provided in Article XVI of this constitution.

It shall be the duty of the Commissioner of Indian Affairs to call such an election at the request of a majority of the business committee members or upon presentation of a petition signed by at least fifty (50) adult members of the tribal council provided that not less than thirty (30) days notice of such an election shall be given by appropriate publicity throughout the communities in which the members of the Apache Tribe of Oklahoma reside. Copies of any proposed amendment shall be furnished members upon request.

ARTICLE XII - DUTIES OF OFFICERS

Section 1. Chairman: The Chairman shall preside at all meetings of the Apache Tribal Council, and at all meetings of the business committee. He shall have general supervision of the Apache Tribal Council and of the business committee and shall perform all duties of the office of chairman.

Section 2. Vice-Chairman: In the absence of the chairman, the vice-chairman shall perform the duties of the office. In the case of vacancy, the vice-chairman shall succeed at once to the office of the chairman.

Section 3. Secretary-Treasurer: The secretary shall keep an accurate account of all proceedings and official records of the Apache Tribal Council and of the business committee and shall file a copy of same with the Superintendent at the Anadarko Agency in Anadarko, Oklahoma. He shall be responsible for the prompt and efficient handling of all correspondence pertaining to the business of the Apache Tribal Council and of the business committee, and he shall exercise all of the powers and duties usually associated with the office of treasurer. All official records of the secretary-treasurer shall be open to inspection by the Apache Tribal Council in the presence of the secretary-treasurer, upon the order of the business committee or upon the written request of fifty (50) members of the Apache Tribal Council. He shall keep a correct list of all members of the Apache Tribal Council, shall authenticate all accounts or orders of the Apache Tribal Council, and in the absence of the chairman and the vice-chairman, shall call meetings to order until a chairman (pro tem) is selected. At the expiration of his term of office, the records and all papers in his possession shall be turned over to his successor.

ARTICLE XIII - QUALIFICATIONS OF OFFICERS

Any person elected to the business committee shall be not less than twenty-five (25) years of age.

Any person who has been found guilty of a felony in any city, county, state or federal court shall be ineligible to hold office. Upon the conviction of any officer or committeeman his office shall automatically become vacant. Any person holding elective office who without an excuse from the business committee misses three regular or special meetings in succession shall automatically lose office.

ARTICLE XIV - PLACE OF MEETINGS

All regular and special meetings of the Apache Tribal Council and of the Apache Business Committee shall be held at the Anadarko Agency Conference Room unless some other point, under the Anadarko Agency jurisdiction, is designated in the notice of call.

ARTICLE XV - QUORUM

Section 1. Fifty (50) members of the Apache Tribal Council shall constitute a quorum to transact business at any meeting.

Section 2. Three (3) members of the business committee shall constitute a quorum to transact business at any meeting.

ARTICLE XVI - ADOPTION :

Following approval by the Commissioner of Indian Affairs, this constitution shall become effective when ratified by a majority vote of those voting in an election authorized by the Commissioner and conducted pursuant to regulations prescribed by the Superintendent of the Anadarko Agency.

APPROVAL

I, John O. Crow, Deputy Commissioner of Indian Affairs do hereby approve the foregoing constitution of the Apache Tribe of Oklahoma.

(sgd) John O. Crow
Commissioner of Indian Affairs

Washington, D. C.

Date: December 1, 1971

Ratified: February 5, 1972

UPDATED: MARCH 1, 1996

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APACHE BUSINESS COMMITTEE
Alonzo Chalpah- Chairman
Mary Rivera - Vice-Chairperson
Jimmy Komardley- Secretary/Treasurer
Telephone: 405/247-9493

APACHE BUSINESS COMMITTEE
Henry Kostzuta-Committee Member
Leonard Chalpah-Committee Member
Donald Komardley-Assistant Tribal Administrator
Fax: 405/247-2686

Apache Tribe of Oklahoma

511 East Colorado
Post Office Box 1220
ANADARKO, OKLAHOMA 73005

Resolution Executing Equipment Lease Agreement by and between KAGD, LLC and the Apache Tribe of Oklahoma

RES# 12-027-01-07

WHEREAS, The Apache Tribe of Oklahoma is a federally recognized Indian Tribe with a Constitution approved by the Secretary of Interior to safeguard the Tribal rights, powers and privileges of its members on December 1 1971, and ratified on February 5, 1972, and

WHEREAS, the Apache Business Committee has the power to transact business for the tribe under Apache Resolution No. 73-1 and 78-7.

WHEREAS, the Apache Business Committee finds that KADG is a suitable company to provide machines and services to the Silver Buffalo Casino, located in Anadarko, Oklahoma in accordance with the terms listed herein.

WHEREAS, the Apache Business Committee hereby executes the following equipment lease together with its provisions of limited waiver of sovereign immunity by and between KAGD, LLC and the Apache Tribe of Oklahoma.

APACHE - ANADARKO EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT ("Lease") is made and entered into this 21 day of December, 2007, by and between KAGD, LLC, a Nevada limited liability company ("Owner"), whose



address is 2251 S. Fort Apache Rd, Las Vegas, NV 89117 and Apache Tribe of Oklahoma, a federally recognized Indian tribe (the "Lessee"), whose address is P.O. Box 1220, Anadarko, OK 73005.

Owner desires to lease to Lessee, and Lessee desires to lease from Owner in accordance with the terms and conditions contained herein, certain equipment more fully described in a Lease Schedule which is to be attached hereto as Annex I and which shall be in the form that is attached hereto as Exhibit "A" (the "Lease Schedule"). All equipment described in the Lease Schedule shall be collectively referred to as the "Equipment". The Equipment shall consist of:

(i) 350 Class III Gaming devices to be selected by Lessee in accordance with Section 3 below (as such devices may be substituted with any Replacement Units, the "Units").

(ii) the Ancillary Furnishings which are referred to by Section 3.2 below.

The Equipment is to be installed in and to be used in connection with the casino facilities (the "Lessee's Casino Facilities") located on certain of the Lessee's Indian Lands near Anadarko, Oklahoma and operated under the trade name of Silver Buffalo Casino.

NOW THEREFORE, Owner and Lessee agree as follows:

1. **LEASE AND LEASE SCHEDULE.** This Lease and the Lease Schedule establish the terms and conditions by which Owner shall lease the Equipment to Lessee. The Lease Schedule shall incorporate by reference the terms of this Lease.

2. **COMMENCEMENT AND TERM.**

2.1 **Commencement Date.** The "Lease Commencement Date" shall mean the date:

(i) when any of the units have been properly installed at Lessee's Casino Facilities; and

(ii) the same units are available for play by patrons of Lessee's Casino Facilities.

2.2 **Lease Term.** The term of this Lease (the "Lease Term") shall commence on the Lease Commencement Date and shall expire when the first of the following has occurred (the "Lease Expiration Date"): (i) the date which is 6 years and 364 days subsequent to the Lease Commencement Date (the "Scheduled Expiration Date"); or (ii) the Buyout Date which is referred to by Section 2.3 below. As used herein, "Lease Years" shall mean a collective reference to the annual period commencing on the Lease Commencement Date and to each succeeding annual period thereafter (except that the final Lease Year shall be 364 days) which occurs during the Lease Term.

2.3 Buyout Option. At any time after the fourth anniversary of the Lease Commencement Date, and prior to the Lease Expiration Date, Lessee shall have an option to purchase the Equipment in accordance with the following terms and conditions (the "Buyout Option"):

- (i) In order to exercise the Buyout Option, Lessee shall give Owner written notice thereof (a "Buyout Notice"). The effective date of the Buyout Notice is referred to herein as the "Exercise Date". After the Exercise Date, Lessee shall be obligated to purchase the Equipment from Owner, and Owner shall be obligated to sell the Equipment to Lessee, all in accordance with Paragraphs (ii) and (iii) below (the "Buyout Purchase"). Lessee shall not be entitled to deliver the Buyout Notice at any time when there is an uncured Event of Default by Lessee hereunder, or the Lease has been terminated in accordance with the terms and conditions hereof.
- (ii) On the second Payment Date (as defined by Section 5.1) following the Exercise Date, or on such other Payment Date as may be agreed by the parties (in either case, the "Buyout Date"): (aa) Owner shall convey the Equipment to Lessee, pursuant to documentation reasonably acceptable to Owner and Lessee (the "Conveyance Documents"); and (bb) Lessee shall pay the Buyout Price to Owner in immediately available funds (the "Purchase Funds"). The Conveyance Documents and Purchase Funds shall be delivered to an independent escrow agent, which is reasonably acceptable to Owner and Lessee, for closing of the Buyout Purchase in accordance with instructions which are also reasonably acceptable to Owner and Lessee. The Equipment shall be transferred without warranty or representation by Owner, except for warranties and representations (all of which shall be set forth by the Conveyance Documents) that Owner has good and marketable title to the Equipment, free and clear of all liens and encumbrances (except that the WAP/Participation Units shall be subject to the interest of the WAP/Participation Vendors and the terms and conditions of the WAP/Participation Agreements and the Royalty Units shall be subject to the terms and conditions of the Royalty Agreements).
- (iii) Upon closing of the Buyout Purchase, this Lease shall be terminated and neither Owner, nor Lessee, shall have any further obligations hereunder except for: (aa) unsatisfied obligations owed pursuant to Events of Default which occur hereunder prior to the Buyout Date; and (bb) obligations hereunder which, by their terms, expressly survive such termination.

2.4 Buyout Price. The "Buyout Price" shall be determined as follows:

- (i) the sum of all Basic Rent payments which were required to be made during the annual period immediately preceding the Exercise Date shall be divided by the number of Payment Dates during such period in order to arrive at the "Estimated Payment Amount".
- (ii) it shall then be hypothetically presumed that a stream of payments, each equal to the Estimated Payment Amount, will be made on the Buyout Date and on each succeeding Payment Date thereafter until, and including, the Scheduled Expiration Date (collectively, the "Estimated Payments"). Such stream of payments shall then be reduced to its present value, as of the Buyout Date, using a discount rate which is equal to eight and fifteen one hundredths percent (8.15%) per annum. The resulting present value shall be the "Buyout Price".

3. EQUIPMENT.

3.1 Selection of Units. Each Unit shall be a "class III game" which, in each case, is: (i) permitted by, and licensed under, the terms of the Tribal-State Compact between the Lessee and the State of Oklahoma herewith; and (ii) is readily available to be purchased for use at Lessee's Casino Facilities.

3.2 Slot Ticketing System and Ancillary Furnishings. The Equipment shall also include:

(i) a slot ticketing system enabling the Units to accept ticket vouchers for wagers and disperse ticket vouchers as entitlements to payment (the "Slot Ticketing System"). The Slot Ticketing System shall: (aa) have performance, component and function specifications which are consistent with industry standards and which will provide adequate assurances that the Slot Ticketing System will be compatible with the Slot Accounting System; and (bb) be compatible with the Units. The Slot Ticket System shall include all peripheral hardware and software necessary for the operation thereof; and

(ii) all stands, stools and signage which are necessary for use of the Units (collectively, the "Ancillary Furnishings").

3.3 Refurbished Equipment. The Units and the Ancillary Furnishings may be used items which have been refurbished in such a manner that they are of substantially the same quality and appearance as new Units and Ancillary Furnishings of the same make and model (collectively "Refurbished Units").

3.4 WAP, Participation and Royalty Units. At the election of Lessee, the Units selected in accordance with Section 3.1 hereof may include WAP Units, Participation Units and Royalty Units, each of which are defined as follows:

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(i) "WAP Units" shall mean Units which are linked to Class III Gaming devices that are located in gaming establishments other than Lessee's Casino Facilities, which linkage is accomplished, pursuant to a wide area progressive network (the "WAP") that is owned and operated by the vendor of the WAP Unit (the "WAP Vendor"). WAP Units are owned by the WAP Vendor and will be provided for use by Lessee pursuant to an agreement between the WAP Vendor and Owner (the "WAP Agreement") which will provide, among other things, that: (aa) payments will be made to the WAP Vendor in an amount which is equal to a specified percentage of amounts wagered in play on the WAP Unit (the "WAP Percentage Payments"); and (bb) the WAP Vendor will provide the WAP Unit, perform certain maintenance tasks with respect to the WAP Unit, maintain and operate the WAP and satisfy certain jackpots ("WAP Jackpots") which are payable with respect to the WAP; all as more particularly set forth therein.

(ii) "Participation Units" shall mean Units which are not linked to a WAP, but are owned by the vendor (the "Participation Vendor") and which will be provided for use by Lessee pursuant to an agreement between the Participation Vendor and Owner (the "Participation Agreement") which will provide, among other things, that: (aa) payments will be made to the Participation Vendor in an amount which is equal to a specified percentage of the gross win on the Participation Unit (the "Participation Percentage Payments", and, together with the WAP Percentage Payments, the "WAP/Participation Percentage Payments"); and (bb) the Participation Vendor will provide the Participation Unit and perform certain maintenance tasks with respect to the Participation Unit; all as more particularly set forth therein.

(iii) "Royalty Units" shall mean Units which are owned by Owner; but, which are subject to an agreement (a "Royalty Agreement") with the vendor thereof (the "Royalty Vendor"), providing, among other things, that continued use of the Royalty Unit requires certain payments to the Royalty Vendor (the "Royalty Payments"), all as more particularly set forth therein.

The WAP Units and Participation Units are collectively referred to herein as the "WAP/Participation Units". The WAP Vendors and the Participation Vendors are collectively referred to herein as the "WAP/Participation Vendors". The WAP Agreements and the Participation Agreements are collectively referred to herein as the "WAP/Participation Agreements". The Equipment, other than the WAP/Participation Units, is collectively referred to herein as the "Owned Equipment".

3.5 Equipment Costs. The aggregate cost to Owner of all Equipment which is selected by Lessee pursuant to delivery of the Lease Schedule (collectively, the "Initial Equipment Cost") shall not exceed Five Million Dollars (\$5,000,000.00). The Initial Equipment Cost shall include all amounts

payable to, or for the benefit of, the Vendors of such Equipment, as part of the purchase transaction, including, without limitation, the final sales price as well as all taxes, delivery charges and other amounts. Owner shall consult with Lessee and provide Lessee with reasonable assistance to determine: (i) which Equipment is available for purchase (or, in the case of WAP Units and Participation Units, which items are available for contract) in the market place; (ii) the cost of such items to Owner, where applicable; and (iii) the terms of contract for such items, where applicable. All references herein to the "Vendors" shall be to the WAP/Participation Vendors, the Royalty Vendors and all other vendors of the Equipment.

3.6 Delivery of Lease Schedule. Lessee shall complete the Lease Schedule in compliance herewith and deliver the completed Lease Schedule to Owner within 30 days following execution of this agreement. Provided that the Lease Schedule has been completed in compliance herewith, it shall be executed by each party and attached hereto as Annex I.

3.7 Slot Accounting System. Lessee is party to a lease agreement with M3 (the "Accounting System Lease") pursuant to which it leases an M3 slot accounting system (the "Slot Accounting System" and, together with the Slot Ticketing System, the "Ticketing and Accounting System"). Lessee shall remain responsible for all obligations under the Accounting System Lease. However, in order to defray the expense to Lessee of satisfying such obligations, Owner shall pay Lessee an amount equal to \$1.00 per day for each Unit that is in operation in Lessee's Casino Facility.

4.0 REPLACEMENT AND CONVERSION OF UNITS.

4.1 Discretionary Replacements. During each of the second through seventh Lease Years, and subject to the aggregate cost limitation provisions set forth by Section 4.6, below, Lessee shall be entitled to request that Owner replace a certain number of Units, to be determined in accordance with Section 4.5 below, with substitute Units that are selected by Lessee in compliance with the criteria set forth by Section 3.1 hereof ("Discretionary Replacement Units"). If the Unit being replaced is readily available for purchase on the open market, the Discretionary Replacement Unit shall have a maximum cost to Owner which is substantially equivalent to the cost of the Unit being replaced (determined as of the replacement date). If the Unit being replaced is not readily available for purchase on the open market, the Discretionary Replacement Unit shall have a maximum cost to Owner (determined as of the replacement date) which is substantially equivalent to that of a Class III gaming device, that is readily available for purchase on the open market, and which would have a value comparable to the Unit being replaced, if the Unit being replaced was new (or, in the case of a Refurbished Unit, refurbished) on the replacement date.

4.2 Maintenance Replacements. In addition to the Discretionary Replacements, Owner shall also replace such Units as Lessee deems reasonably necessary or advisable, in the exercise of commercially reasonable casino operating practice for tribal casinos with a size and market that is similar to Lessee's Casino Facilities, to adequately maintain the Equipment ("Maintenance Replacement Units" and, together with the Discretionary Replacement Units, the "Replacement Units"). Each Maintenance Replacement Unit shall be selected by Lessee in compliance with the criteria set forth by Section 3.1 hereof and: (i) if the Unit being replaced is readily available for purchase on the open market, the Maintenance Replacement Unit shall have a maximum cost to Owner which is substantially equivalent to the cost of the Unit being replaced (determined as of the replacement date); or (ii) if the Unit being

replaced is not readily available for purchase on the open market, the Maintenance Replacement Unit shall have a maximum cost to Owner (determined as of the replacement date) which is substantially equivalent to that of a Class III gaming device, that is readily available for purchase on the open market, and which would have a value comparable to the Unit being replaced if the Unit being replaced was new (or in the case of a Refurbished Unit, refurbished) on the replacement date.

4.3 Replacement Process. Upon designation, of a Unit for replacement by a Discretionary Replacement Unit or Maintenance Replacement Unit pursuant to the above, Owner shall arrange, at Owner's expense, to remove the Unit so designated and provide for such replacement within such time as may be reasonable under the circumstances. All Units, which are replaced with Replacement Units, shall be the property of Owner and shall no longer be included within the Equipment.

4.4 Conversion Units. In addition to Discretionary Replacement of Games, Lessee shall also be entitled to have certain Units converted (as hereinafter described) subject to the following provisions:

(i) to the extent that the manufacturer of any Unit provides a process which allows Owner to purchase one or more internal components, which are designed to be compatible with such Unit, for the express purpose of substituting such components for existing components of the Unit in order to change the game(s) played thereon, such process is referred to herein as a "Conversion".

(ii) during each of the second through seventh Lease Years, Lessee may require Owner to perform a Conversion with respect to a number of Units which shall be determined in accordance with Section 4.5 below.

(iii) the substituted game(s) which result from any Conversion shall be selected by Lessee, provided that, subsequent to such Conversion, the Unit which is so converted shall have specifications which would have allowed it to be selected by Lessee under Section 3.1.

4.5 Number of Discretionary Replacement Units and Conversions. The number of Discretionary Replacement Units and Conversions to which Lessee may be entitled shall be determined as follows:

- (i) During the first Lease Year, Lessee shall be entitled to a number of: (aa) Replacement Units that is equal to 3; and (bb) Conversions which is equal to 12. During each of the second through sixth Lease Years, Lessee shall be entitled to a number of: (aa) Replacement Units which is equal to 6 plus the number of Carryover Replacement Units, which is available for the applicable Lease Year; and (bb) Conversions which is equal to 24 plus the number of Carryover Conversions, which is available for the applicable Lease Year. During the seventh Lease Year,

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Lessee shall be entitled to a number of: (aa) Replacement Units which is equal to the number of Carryover Replacement Units, which is available for the seventh Lease Year; and (bb) Conversions which is equal to the number of available Carryover Conversions, which is available for the seventh Lease Year. The number of Carryover Replacement Units and Carryover Conversions, for each Lease Year, shall be determined in accordance with Paragraph (ii) below.

- (ii) Except to the extent hereinafter set forth, any Replacement Units or Conversions: (aa) to which Lessee may be entitled during any Lease Year; and (bb) which are not utilized during such Lease Year; may be utilized during the next succeeding Lease Year (with such utilization being referred to herein as a "Carryover"). However, Lessee may not Carryover more than 6 Replacement Units and 24 Conversions to any Lease Year. Replacement Units which Lessee is entitled to Carryover under this Paragraph are referred to herein as "Carryover Replacement Units" and Conversions which Lessee is entitled to Carryover under this Paragraph are referred to herein as "Carryover Conversions".
- (iii) Any Replacement which Lessee may be entitled to exercise hereunder during any Lease Year may, at Lessee's election, be exercised, instead, as a Conversion during such Lease Year.

4.6 Discretionary Replacement, Conversion and Maintenance Replacement Cost Limitations. Notwithstanding any other provisions herein, it is specifically provided that the aggregate cost of: (i) all Discretionary Replacements, Conversions and Maintenance Replacements, which are performed in accordance herewith; and (ii) supplies and game parts which are to be financed by Owner in accordance with Section 3.3; during: (i) the first Lease Year shall not exceed Seventy Five Thousand Dollars (\$75,000.00); (ii) each of the second through sixth Lease Years shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00); and (iii) the seventh Lease Year shall not exceed Seventy Five Thousand Dollars (\$75,000.00).

5.0 RENT AND PAYMENTS.

5.1 Basic Rent and Payment. The Basic Rent shall be determined with reference to the "Net Win" during each Rent Period. The "Net Win" for any Rent Period shall be the aggregate amount of all Drops during the Rent Period, less the aggregate amount of: (aa) all Machine Payouts made during the Rent Period; and, less (bb) all WAP/Participation Percentage Payments and Royalty Fees paid, or payable, with respect to revenue received from, or the use of, any of the Units during the Rent Period.

The Basic Rent for the applicable Rent Period shall be an amount which is equal to 20% of the Net Win for such Rent Period.

The Basic Rent shall be payable bi-monthly (with the date when each such payment is required being referred to herein as a "Payment Date"). Each payment shall be accompanied by a written detailed accounting which represents the calculation of the Net Win.

5.2 Miscellaneous Definitions Related to Basic Rent. All references herein to:

- (i) "Drops", when used with respect to any Rent Period, shall mean the aggregate amount of all currency, coin and other media of exchange which are deposited into the Units during such Rent Period (excluding vouchers issued by the Ticketing System), and, to the extent not included in the foregoing, all other gross revenue generated by any of the Units.
- (ii) "Machine Payouts", when used with respect to any Rent Period, shall mean the aggregate amount paid by Lessee in satisfaction of amounts won by players from any Units during such Rent Period; and
- (iii) "Rent Period" shall mean a reference to any bi-monthly period immediately preceding a Payment Date.

5.3 Vendor Percentage and Royalty Payments. Upon receipt of an invoice from any WAP/Participation Vendor or Royalty Vendor setting forth WAP/Participation Percentage Payments or Royalty Payments (collectively, "Lessee Vendor Payments") with respect to any WAP Unit, Participation Unit or Royalty Unit, as applicable, Owner shall promptly forward such invoice to Lessee. Upon receipt of such invoice, Lessee shall: (i) make the payment required by such invoice directly to the issuing vendor, within the time period required thereby; and (ii) concurrently with such payment, provide notice thereof to Owner.

5.4 Additional Charges. Any amounts payable by Lessee, to Owner, hereunder (other than Basic Rent) shall be deemed Additional Charges and shall be payable on the Payment Date next following the date upon which they accrue or the last day of the Lease Term, whichever is earlier. Lessee shall make payments of all Additional Charges to Owner at such address or to such account as Owner may designate in writing. As used herein, the term "Rent" shall mean all Basic Rent and Additional Charges. Any Rent not paid by Lessee when due shall, at the option of Owner, bear interest at an annual rate equal to the lesser of 18% or the highest rate permitted by law.

5.5 Owner's Performance of Lessee's Obligations. Except as provided in Section 12.2, if Lessee fails to comply with any obligation which it may have hereunder to make payments to any third party, Owner may, at its option, make such payments on Lessee's behalf without thereby waiving such obligations or the failure to comply therewith and all sums advanced by Owner in connection therewith shall be repayable by Lessee as Additional Charges. No such performance shall be deemed to relieve Lessee of its obligations herein.

6. DELIVERY AND INSTALLATION. In reliance on the Lease Schedule, Owner shall order the Equipment as soon as is commercially reasonable after receipt of the Lease Schedule. Owner shall have no liability for any delay in delivery or failure by the applicable Vendor to deliver any

Equipment or to fill any purchase order or meet the conditions thereof. Owner, at its expense, shall: (i) provide or cause to be provided expert supervision of the installation of the Equipment; and (ii) pay all transportation, packing, duties, installation, testing and other charges in connection with the delivery, installation and preparation for use of the Equipment. Lessee, at its expense, will provide all power and networking infrastructure required for installation and use of the Equipment, including, but not limited to, all wiring for networking, insuring network is operational, power and data and appropriate surge protection and uninterrupted power supplies. As soon as practicable after receipt of any one or more Units, Lessee shall furnish Owner with a written statement acknowledging receipt of the Units in good operating condition and repair, and accepting them as satisfactory in all respects for the purposes of this Lease. Completion and signature of such statement by any employee, official or agent of Lessee having authority in the premises or having managerial, supervisory or procurement duties with respect to equipment of the same general type as the Equipment leased hereunder shall constitute acceptance of such Equipment on behalf of Lessee.

Lessee understands and agrees that neither the Vendors, nor any salesman or other agent of the Vendors is an agent of Owner. No salesman or agent of any Vendor is authorized to waive or alter any term or condition of this Lease, and no representation as to Equipment or any other matter by any Vendor, or by any salesman or agent of any Vendor shall in any way affect Lessee's duty to pay the Rent and perform its other obligations as set forth in this Lease.

7. NET LEASE AND UNCONDITIONAL OBLIGATION. Except to the extent otherwise expressly set forth herein, this Lease, including the Lease Schedule, is a net lease and Lessee's obligation to pay all Rent due and the rights of Owner or its assignees in, and to, such Rent shall be absolute and unconditional (except as expressly provided herein) and by way of illustration, and not limitation, none of such obligations and remedies shall be affected or impaired by any of the following: (i) any setoff, abatement, reduction, counterclaim, recoupment, defense or other right which Lessee may have against Owner, its assignees, the manufacturer or Vendor of any Unit; (ii) any defect in title, condition, operation, fitness for use, or any damage to or destruction of, the Equipment which does not result from a default hereunder by Owner; (iii) any interruption or cessation of use or possession of the Equipment for any reason whatsoever which does not result from a default hereunder by Owner; or (iv) any insolvency, bankruptcy, reorganization or similar proceedings instituted by or against Lessee.

8. LOCATION AND USE; IDENTIFICATION AND INSPECTION; MAINTENANCE, REPAIRS, PURCHASING AND OUTSOURCING.

8.1 Location and Use. (a) Lessee shall keep and use the Equipment at Lessee's Casino Facilities and shall not remove any Unit unless Owner consents, in writing, prior to its removal (except that this Clause (a) shall not apply to removal of any Unit pursuant to seizure by, or the order of, any federal or state governmental authority); (b) Lessee shall at all times, and at its sole cost and expense, operate the Ticket and Accounting System in a commercially reasonable manner and maintain such other accounting systems as may be reasonably necessary to monitor, record and report receipts and revenues and otherwise maintain sufficient records of a type generally accepted in the industry; and (c) Lessee shall comply with manufacturer instructions relating to the Equipment, with IGRA, with the Tribal-State Compact between the Lessee and the State of Oklahoma, and with all other applicable laws and governmental regulations.

8.2 Identification and Inspection. Upon request by Owner, Lessee shall mark each Unit conspicuously with appropriate labels or tags furnished by Owner and maintain such markings through the Lease Term to clearly disclose that said Unit is being leased from Owner. Subject to Lessee's reasonable security requirements, Lessee shall permit Owner's representatives to enter the Premises where any Unit is located to inspect such Unit.

8.3 Maintenance. Lessee shall, at all times properly maintain the Equipment in good operating condition and make all necessary repairs thereto in a commercially reasonable manner (the "Maintenance Function"). Owner shall make payments to Lessee in order to reimburse Lessee for some, or all of the Maintenance Function cost. Such payments shall be based on the following schedule: up to Seventy Thousand Dollars (\$70,000.00) per year for wages for slot machine technicians; up to Ten Thousand Dollars (\$10,000.00) per year for slot machine technician training (collectively, the "Maintenance Reimbursement Payments"). As a condition of Owners obligations to make such Maintenance Reimbursement Payments, Lessee shall provide Owner with commercially reasonable documentation supporting the amounts to be reimbursed. In addition to the Maintenance Reimbursement Payments, Owner shall also be responsible for the cost of all Maintenance Replacements in accordance with Section 4.2, and subject to the cost limitations set forth by Section 4.6.

9. LIENS AND ENCUMBRANCES; NO IMPROVEMENTS.

9.1 Personal Property. Each Unit is personal property and Lessee shall not affix any Unit to realty so as to change its nature to a fixture or real property and agrees that each Unit shall remain personal property during the Lease Term. Owner expressly retains ownership and title to the Equipment. Lessee hereby authorizes, empowers, and grants a power of attorney to Owner to record and/or execute and file, on Lessee's behalf, any certificates, memorandums, financing statements, refiling, and continuations thereof as Owner deems necessary or advisable to preserve and protect its interest hereunder. In furtherance thereof, Owner may file or record this Lease or a financing statement with respect thereto so as to give notice to any interested parties. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. The parties intend to create a lease agreement and the relationship of Owner and lessee between themselves.

9.2 Liens and Encumbrances. Unless otherwise provided herein, Lessee shall not directly or indirectly create, incur or suffer a mortgage, claim, lien, charge, encumbrance or the legal process of a creditor of Lessee of any kind upon or against this Lease or any Unit. Lessee shall at all times protect and defend, at its own cost and expense, the title of Owner from and against such mortgages, claims, liens, charges, encumbrances and legal processes of creditors of Lessee and shall keep all the Equipment free and clear from all such claims, liens and legal processes. If any such lien or encumbrance is incurred, Lessee shall immediately notify Owner and shall take all actions required by Owner to remove the same; provided that Lessee shall have the option provided in Section 12.2.

9.3 No Improvements. Lessee shall make no modifications or alterations to any Unit, without the prior written consent of Owner. All alterations and attachments at any time made or placed in or upon the Equipment shall become part of the Equipment and shall be the property of Owner; provided, however, that, to the extent that any such attachments were the property of Lessee prior to affixation,

Lessee shall have the option of removing such attachment pursuant to this Section provided that such attachment is readily removable without damage to the Equipment.

10. RETURN OF EQUIPMENT AND PURCHASE OPTION AT EXPIRATION OF TERM.

10.1 Duty of Return and Obligation to Remove. At the expiration of the Lease Term or upon termination of the Lease, Lessee shall make the Equipment available to Owner, and shall provide Owner with reasonable cooperation in order to facilitate removal of the Equipment. Owner shall remove the Equipment from Lessee's Casino Facilities, at its own expense, in a commercially prompt manner.

10.2 Failure to Return. Lessee shall continue to pay to Owner additional Basic Rent for each Rent Period, or any portion thereof, that Lessee fails to comply with the terms of this return provision, until all of the Equipment is returned, as provided herein.

10.3 Purchase Option At Expiration of Term. Upon occurrence of the Lease Expiration Date, Lessee shall have the option to purchase: (i) all of the Owned Equipment (subject, where applicable, to the Royalty Agreements); and (ii) the Owner's interest under all of the WAP/Participation Agreements so long as there is not an uncured Event of Default then existing, by written notice to Owner, at Owner's address set forth above, not later than 120 days prior to the Lease Expiration Date for a purchase price of \$1, to be paid on the Lease Expiration Date. On the date of such purchase: (i) Lessee shall pay to Owner in cash the purchase price of the Equipment; (ii) Lessee shall execute all documents necessary to provide for transfer of the WAP/Participation Agreements and the Royalty Agreements; and (iii) Owner shall transfer to Lessee without recourse or warranty, express or implied, Owner's interest in such Equipment, "AS IS", in its then condition and location. In no event may such option to purchase be exercised on less than all of the Equipment.

11. RISK OF LOSS: INSURANCE.

11.1 Risk of Loss. Owner shall bear the risk, if any, of all loss or damage to any Equipment, or caused by any Equipment, until such time as it is delivered to Lessee's Casino Facilities. To the extent that Lessee has an insurable interest in any of the Equipment prior to delivery in accordance herewith, Owner shall cause Lessee to be named as an additional insured on all replacement insurance coverage which is maintained by Owner on the Equipment prior to delivery. Lessee shall bear the risk of all loss or damage to any Equipment or caused by any Equipment during the period from the time such Equipment is delivered to Lessee's Casino Facilities until the time it is returned or transferred as provided herein.

11.2 Damage or Destruction of Equipment. If any Equipment is lost, stolen, destroyed, seized by governmental action or, in Lessee's opinion or Owner's opinion, damaged beyond repair ("Event of Loss"), this Lease and the Lease Schedule shall remain in full force and effect with respect to such Equipment. Lessee shall promptly notify Owner of any Event of Loss and shall promptly replace such Equipment at its sole expense with Equipment of equivalent value, useful life and utility, and similar kind, in substantially the same condition as the replaced Equipment was in immediately prior to the Event of Loss, and to which Owner can take good title, free of liens and encumbrances.

Title to any replacement Equipment immediately shall vest and remain in Owner, and such equipment shall be deemed Equipment under this Lease and the Lease Schedule. Upon such vesting of title and provided Lessee is not in default under this Lease, Owner shall cause to be paid to Lessee any insurance proceeds actually received by Owner for Equipment replaced at Lessee's expense. Lessee shall provide Owner with and shall enter into, execute and deliver such documentation as Owner shall request with respect to the replacement of any Equipment.

11.3 Insurance. Lessee shall obtain and maintain in full force and effect all risk, full replacement cost casualty insurance with respect to the Equipment. Such insurance shall: (i) name Owner and its assignees, if any, as first loss payees as their interests may appear; and (ii) provide that the policy may not be canceled or materially altered without thirty (30) days prior written notice to Owner and its assignees. Such insurance shall be placed with companies reasonably acceptable to the Owner. Lessee shall furnish to Owner, upon request and throughout the Term, insurance certificates of a kind satisfactory to Owner and its Assignees showing the existence of the insurance required hereunder and premium paid.

12. TAXES AND EXPENSES.

12.1 Taxes. Lessee agrees to report, file, pay promptly when due to the appropriate taxing authority and indemnify, defend, and hold Owner harmless from and against any and all taxes, assessments, license fees and other governmental charges of any kind or nature, together with any penalties, interest or fines related thereto (collectively, "Taxes"), which are assessed by Lessee, or by any instrumentality of Lessee (collectively, "Tribal Authorities"), and which pertain to the Equipment, its purchase, this Lease, or any proceeds or income thereof (collectively, "Equipment Related Matters"). In the event that any Taxes are assessed against Owner with respect to any Equipment Related Matter by a governmental authority which is not a Tribal Authority (other than taxes on the income of Owner), Lessee shall diligently dispute such assessment to the extent that it can reasonably be characterized as violative of Lessee's sovereign immunity.

12.2 Right to Contest. Lessee may, at its own expense and in its own name, in good faith contest any such Taxes and, in the event of any such contest, may permit the Taxes so contested to remain unpaid during the period of such contest and any appeal therefrom unless Owner shall notify Lessee that, in the opinion of independent counsel, by nonpayment of any such items the interest of Owner in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss of forfeiture, in which event Lessee shall promptly pay such Taxes or provide Owner with full security against any loss which may result from nonpayment, in form satisfactory to Owner.

13. REGULATORY FEES, ASSESSMENTS. Any fees or assessments that the Lessee, Lessee's Tribal Gaming Authority, or any other entity of the Lessee assessed upon the Owner shall be reasonable, in accord with industry standards for such fees and assessments, be related to the actual costs of the regulatory function being conducted, and shall, in no instance exceed Five Thousand Dollars (\$5,000.00) annually to the Owner.

14. REPRESENTATIONS AND WARRANTIES. Lessee represents and warrants to Owner that: (i) the Lessee is a federally recognized Indian tribe duly organized and existing pursuant to the Constitution of the Tribe; (ii) the making of this Lease and the anticipated Lease Schedule executed

by Lessee is duly authorized on the part of Lessee and that upon due execution thereof by Lessee and Owner they shall constitute valid obligations binding upon, and enforceable against, Lessee in accordance with their terms; (iii) neither the making of this Lease, the making of the Lease Schedule, nor the due performance by Lessee, including the commitment and payment of the Rent, shall result in any breach of, or constitute a default under, or violation of, the Constitution or laws of the Tribe, or any agreement to which Lessee is a party or by which Lessee is bound; (iv) no approval or consent not already obtained or withholding of objection is required from any governmental authority, or under any other agreement to which Lessee is a party, with respect to the entering into, or performance of this Lease or the Lease Schedule by Lessee and (v) Lessee has obtained all licenses and permits required by applicable federal, state, local or tribal laws or regulations (the "Gaming Laws") for the operation of its gaming business or use of the Equipment.

15. **DISCLAIMERS; MANUFACTURERS WARRANTIES.** PROVIDED, AND TO THE EXTENT, THAT THE EQUIPMENT HAS BEEN ACCEPTED BY LESSEE PURSUANT TO DELIVERY OF THE LESSEE ACKNOWLEDGMENTS (AS REQUIRED BY SECTION 6), LESSEE ACKNOWLEDGES THAT ALL EQUIPMENT IS OF THE DESIGN, CAPACITY AND MANUFACTURE SPECIFIED FOR AND BY THE LESSEE AND THAT LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR LESSEE'S PURPOSES. LESSEE AGREES, REGARDLESS OF CAUSE, NOT TO ASSERT ANY CLAIM WHATSOEVER AGAINST OWNER FOR LOSS OF ANTICIPATORY PROFITS OR CONSEQUENTIAL DAMAGES. OWNER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE EQUIPMENT WHETHER EXPRESSED OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING IT IS INTENDED BY THE PARTIES TO EXCLUDE ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSES. NO SALESMAN OR AGENT OF OWNER IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OF THIS LEASE OR MAKE ANY REPRESENTATION REGARDING THE EQUIPMENT. OWNER HEREBY ASSIGNS TO LESSEE WITHOUT RECOURSE ANY WARRANTY PROVIDED BY ANY SUPPLIER OR MANUFACTURER OF EQUIPMENT.

16. **ASSIGNMENT OF LEASE.**

16.1 **Assignment by Owner.** Lessee acknowledges and agrees that Owner may assign its interest in the Rent to others ("Assignees"), and may collaterally assign, grant a security interest in, or otherwise transfer or encumber its interest hereunder, in the Rent and/or in the Equipment to Assignees without consent of Lessee, provided however that Lessee shall be notified in writing of any assignment, and provided further that Lessee shall not be disturbed in its possession of the Equipment and its rights under this Agreement or any Lease so long as Lessee is not in default of its obligations under this Agreement or any Lease.

16.2 **Assignment or Sublease by Lessee.** Lessee shall not assign this Agreement or any Lease or assign its rights in or sublet the Equipment, or any interest therein without Owner's prior written consent.

17. **FINANCIAL INFORMATION; FURTHER ASSURANCES.**

17.1 Financial Information. Throughout the Lease Term, Lessee shall deliver to Owner copies of (i) within 30 days following the close of each month, financial statements of Lessee's gaming business certified by the chief financial officer of Lessee; (ii) within 120 days following the close of each fiscal year of Lessee, financial statements of Lessee's gaming business conducted on the Premises audited by an independent certified public accountant or accounting firm acceptable to Owner; and (iii) such other information regarding Lessee reasonably requested by Owner or its Assignees.

17.2 Further Assurances. Lessee shall execute and deliver to Owner such other documents, and take such further action as Owner may request, in order to effectively carry out the intent and purposes of this Lease and the Lease Schedule. All documentation shall be in a form acceptable to Owner and its Assignees.

17.3 Lease Agreement. Prior to delivery of any Equipment in accordance herewith, Lessee shall have adopted the Uniform Commercial Code with such conforming modifications as may be reasonably requested by Owner. If any court of competent jurisdiction should determine that this Lease constitutes a security arrangement as opposed to a true lease, the parties then agree that this Lease shall constitute a security agreement within the meaning of the Uniform Commercial Code and that the Owner shall be considered a secured party under the provisions thereof and shall be entitled to all the rights and remedies of a secured party and Lessee, as debtor, grants to Owner, as secured party, a security interest in the Equipment; provided nothing herein shall be construed nor shall the inclusion of this Section 17.3 be interpreted as derogating from the stated intent and contractual understanding of the parties that this is a true lease.

18. DEFAULT BY LESSEE; REMEDIES.

18.1 Default by Lessee. Lessee shall be in default upon the occurrence of any one of the following events (in each case, an "Event of Default"): (a) failure to pay Rent when due and the continuation of such failure, for a period of 10 days after written notice to Lessee of such failure; (b) failure to maintain the insurance required by Section 11.3, (c) failure to perform any other term, condition or covenant of this Lease or the Lease Schedule for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given by Owner to Lessee; (d) Lessee ceases or is enjoined, restrained or in any way prevented from conducting its gaming business for a period of not fewer than 15 days; (e) Lessee removes, sells, transfers, encumbers, parts with possession or sublets the Equipment or any portion thereof; (f) any Equipment is attached, levied upon, encumbered, pledged, or seized under any judicial process and is not released or bonded over to Owner's satisfaction within thirty (30) days; (g) any warranty or representation made by the Lessee in this Lease proves to have been false in any material respect when made; (h) failure to maintain in full force and effect the licenses and permits required under the Gaming Laws for the operation of Lessee's gaming business; (i) failure to comply with all applicable Gaming Laws and regulations, including, without limitation the Tribal-State Compact between the Lessee and the State of Oklahoma or (j) a default or event of default on the part of Lessee occurs, regardless of whether waived, under any other mortgage, indenture, agreement or instrument to which it is a party.

18.2 Owner Remedies. Lessee agrees that upon any Event of Default, and at any time thereafter, Owner, may, in addition to any and all rights and remedies it may have at law or in equity,

without notice to or demand upon Lessee, at its sole option: (i) declare an amount equal to the aggregate Rent then accrued and unpaid together with the balance of any Rent that would have been due and payable during the remainder of the Lease Term calculated on the basis of the average Rent due during each Rent Period occurring during such Lease Term prior to the Event of Default (collectively, the "Owner's Loss") to be immediately due and payable; (ii) proceed by appropriate court action or other proceeding, either at law or in equity to enforce performance by Lessee of any and all covenants of this Lease or to recover, for breach of this Lease, Owner's Loss as of the date Owner's Loss is declared due and payable hereunder; (iii) on written notice to Lessee, terminate any of Lessee's rights under this Lease and the Lease Schedule in which event Lessee shall immediately surrender and return the Equipment or Units covered by the Lease Schedule to Owner pursuant to Section 10.1 hereof; (iv) take possession of, sell and/or re-lease any Unit as Owner may desire, in its sole discretion, and apply the proceeds of such sale or lease to reimburse Owner for Owner's Loss and any additional amounts due under (v) or (vi) below, retaining any surplus and holding Lessee liable for any deficiency; (v) recover interest on the unpaid balance of Owner's Loss from the date it becomes payable until fully paid at an annual rate equal to the lesser of 18% or the highest rate permitted by law; and (vi) recover legal fees and other expenses incurred by reason of an Event of Default or the exercise of any remedy hereunder, including expenses of repossession, repair, storage, transportation, and disposition of the Equipment.

Owner's rights and remedies herein are cumulative, but only to the extent necessary to permit Owner to recover amounts for which Lessee is liable hereunder, and in addition to any rights or remedies available at law or in equity, including the Uniform Commercial Code, and may be exercised concurrently or separately. A termination hereunder shall occur only upon written notice by Owner to Lessee and no repossession or other act by Owner after default shall relieve Lessee from any of its obligations to Owner hereunder unless Owner so notifies Lessee in writing.

18.3 Limitation of Recovery Against Lessee. Notwithstanding any other provision herein, any recovery against Lessee by Owner: (i) shall be strictly limited to the assets and revenues of Lessee's casino enterprise and Lessee's Casino Facilities; and (ii) shall not extend to any other program or enterprise of Lessee.

19. DEFAULT BY OWNER; REMEDIES

19.1 Default by Owner. Owner shall be in default upon occurrence of any one of the following events ("Owner's Events of Default"): (a) any Equipment is attached, levied upon or seized under any judicial process and is not released or bonded over to Lessee's satisfaction within thirty (30) days; (b) failure to perform any other material term, condition or covenant of this Lease (including, without limitation, material failures to satisfy the maintenance obligations of Owner hereunder) for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given by Lessee to Owner.

19.2 Lessee Remedies. Owner agrees that upon any Owner's Event of Default, and at any time following written notice by Lessee to Owner of twenty (20) days, Lessee may, in addition to any and all rights and remedies Lessee may have at law or in equity, proceed by appropriate Court action or other proceeding, either at law or in equity, to enforce performance by Lessee of any and all covenants of this Lease or to recover, for breach of this Lease.

20. MISCELLANEOUS.

20.1 Notices. All notices, requests, reports, information or demand which any party hereto may desire or may be required to give to any other party hereunder, shall be in writing and shall be sent by facsimile or first-class certified or registered United States mail, postage prepaid, return receipt requested, and sent to the party at its address appearing below or such other address as any party shall hereafter inform the other party hereto by written notice given as aforesaid:

If to Lessee: Apache Tribe of Oklahoma
P.O. Box 1220
Anadarko, OK 73005
Facsimile No.: (405) 247-2686

If to Owner: KAGD, LLC
2251 S. Fort Apache Rd #1112
Las Vegas, NV 89117
Facsimile No. (702)-734-9118

All notices, payments, requests, reports, information or demands so given shall be deemed effective when sent, if sent by facsimile, or, if mailed, upon receipt or the expiration of the fifth (5th) day following the date of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

20.2 Survival of Indemnities. All indemnities of Lessee and all obligations of Lessee in this Agreement shall survive and continue in full force and effect for events occurring prior to the expiration of the Term.

20.3 Counterparts. This Lease and any Lease Schedule may be executed in several counterparts and by different parties hereto or thereto on separate counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same instrument.

20.4 Titles. Section titles are not intended to have legal effect or limit or otherwise affect the interpretation of this Lease or any Lease Schedule.

20.5 Waiver. No delay or omission in the exercise of any right or remedy herein provided or otherwise available to Owner, or prior course of conduct, shall impair or diminish Owner's rights to exercise the same or any other right of Owner; nor shall any obligation of Lessee hereunder be deemed waived. The acceptance of rent by Owner after it is due shall not be deemed to be a waiver of any breach by Lessee of its obligations under this Lease or any Lease Schedule.

20.6 Successors. This Lease and each Lease Schedule shall inure to the benefit of and be binding upon Owner and Lessee and their respective successors in interest.

20.7 Not an Offer. Neither this Lease nor any Lease Schedule shall be deemed to constitute an offer or be binding upon Owner until executed by Owner's authorized officer.

20.8 Severability. If any provisions of this Lease or any Lease Schedule shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions thereof shall not be affected or impaired in any way.

20.9 Modification. Owner and Lessee agree that any modifications to this Lease or any Lease Schedule shall be in writing and shall be signed by both parties and their last known assignees, if any.

20.10 Governing Law. This Lease and each Lease Schedule are entered into under and shall be construed in accordance with, and governed by the internal procedural and substantive law of the State of Oklahoma, except that matters concerning the validity and perfection of any security interest shall be governed by the conflict of law rules set forth in the Oklahoma Uniform Commercial Code.

20.11 Lease Schedules. If there is a conflict between the terms and provisions of any Lease Schedule and the terms and provisions herein, the terms and provisions of the Lease Schedule shall control to the extent of such conflict.

20.12 Entire Agreement. LESSEE REPRESENTS THAT IT HAS READ, RECEIVED, RETAINED A COPY OF AND UNDERSTANDS THIS LEASE, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. OWNER AND LESSEE AGREE THAT THIS LEASE AND ALL LEASE SCHEDULES SHALL CONSTITUTE THE ENTIRE AGREEMENT AND SUPERSEDE ALL PROPOSALS, ORAL OR WRITTEN, ALL PRIOR NEGOTIATIONS AND ALL OTHER COMMUNICATIONS BETWEEN OWNER AND LESSEE WITH RESPECT TO ANY UNIT.

21. ARTICLE 2A WAIVERS. In the event that Article 2A of the Uniform Commercial Code is adopted under applicable law and applies to this Lease, then Lessee, to the extent permitted by law, waives any and all rights and remedies conferred upon a lessee by Article 2A. To the extent permitted by applicable law, Lessee also hereby waives any rights now or hereafter conferred by statute or otherwise which may require Owner to sell, lease or otherwise use any Equipment in mitigation of Owner's damages or which may otherwise limit or modify any of Owner's rights or remedies, including, without limitation, any limit on the determination of the amount of Owner's Loss provided in Article 2A of the Uniform Commercial Code.

22. DISPUTE RESOLUTION. "Claim" shall mean any dispute, claim, question, or disagreement between the Owner and Lessee that is directly or indirectly related to this Lease, whether arising under law or in equity, whether arising as a matter of contract or a tort, and whether arising during or after the expiration of this Agreement. The parties agree that any Claim shall be governed by the following dispute resolution procedures:

- (a) The parties shall use their best efforts to settle the Claim. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the parties. If they do not reach such solution within a period of ten (10) days, then, upon notice by a party to the

other parties, all Claims shall be settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules in effect at the time of submission; except that: (a) the question whether or not a Claim is arbitrable shall be a matter for binding arbitration by the arbitrators, such question shall not be determined by any court and, in determining any such question, all doubts shall be resolved in favor of arbitrability; and (b) discovery shall be permitted in accordance with the Federal Rules of Civil Procedure, subject to supervision as to scope and appropriateness by the arbitrators. Unless the parties otherwise agree to in writing, arbitration proceedings shall be held at Oklahoma City, Oklahoma.

- (b) The arbitration proceedings shall be conducted before a panel of three neutral arbitrators, all of whom shall be currently licensed attorneys, actively engaged in the practice of law for at least ten (10) years, one of which shall have five (5) years of experience in federal Indian law, and one of which shall have five (5) years of experience in the gaming industry. The arbitrator selected by the claimant and the arbitrator selected by respondent shall, within ten (10) days of their appointment, select a third neutral arbitrator. In the event that they are unable to do so, the parties or their attorneys may request the American Arbitration Association to appoint the third neutral arbitrator. Prior to the commencement of hearings, each of the arbitrators appointed shall provide an oath or undertaking of impartiality. The Tribe further agrees that any arbitration proceeding held in connection with any Claim may be consolidated with any other arbitration proceeding involving Owner and any of the Lessee's affiliates.
- (c) The arbitration award shall be in writing signed by each of the arbitrators, and shall state the basis for the award. The arbitration award shall be set forth in reasonable detail as to its findings of fact and law, and basis of determination of award form and amount. Except to the extent such enforcement will be inconsistent with a specific provision of this Lease, arbitration awards made pursuant to this Section 22 shall be enforceable in federal court under Title 9 of the United States Code and any applicable tribal, federal or state law governing the enforcement of arbitration awards. In addition to any basis for appeal of an arbitration award stated in Title 9 of the United States Code or any applicable law governing the enforcement of arbitration awards, any party hereto may appeal an arbitration award on the basis that the arbitrators incorrectly decided a question of law in making the award, or the award was made in an arbitrary or capricious manner or in manifest disregard of the factual evidence.
- (d) Each party hereto, without having to exhaust any tribal remedies first, shall have the right to seek and obtain a court order from a court having jurisdiction over the parties requiring that the circumstances specified in the order be maintained pending completion of the arbitration proceedings, to the extent permitted by applicable law.
- (e) Judgment on any arbitration award may be entered in any court having jurisdiction over the parties. The arbitrators shall not have the power to award punitive, exemplary or consequential damages, or any damages excluded by or in excess of any damage limitations expressed in this Agreement.

- (f) The Tribe hereby expressly and irrevocably waive, and also waive its right to assert, sovereign immunity and any and all defenses based thereon with respect to any Claims; and the Tribe hereby consent to (i) binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, (ii) empowering the arbitrators to take the actions and enforce the judicial remedies described in their Resolution of Limited Waiver of Sovereign Immunity dated December ____, 2007 (attached hereto as Exhibit A) adopted by the Tribe in connection with approving the execution of this Agreement, and (iii) judicial proceedings in or before the United States District Court in which the Project is located, the United States Court of Appeals having jurisdiction over the applicable District Court, and the United States Supreme Court, for the purpose of compelling arbitration or enforcing any arbitration award, orders or judgment arising out of this Agreement. If the United States District Court determines it is without jurisdiction, the Tribe consents to be sued in a court of competent jurisdiction and all courts to which an appeal therefrom may be available, but solely to compel, enforce, modify or vacate any arbitration award.
- (g) To the extent lawful in connection with any such Claims, the Tribe expressly waives the application of the doctrines of exhaustion of tribal remedies, abstention or comity that might otherwise require that Claims be heard first in tribal court or other tribal forums of the Tribe.

22.1 Limitation on Recourse. Any award or judgment against the Lessee for money with respect to a Claim may be enforced and collected only as against the assets and revenues of the Lessee that are used in connection with or derived from the Lessee's Casino Facilities.

22.2 Obligation to Meet and Confer. Notwithstanding any other provision of Sections 22 or 23, neither Lessee nor Owner will commence any judicial or arbitration proceeding for a Claim (other than a Claim arising from the occurrence of an Event of Default) without written notice of the pending commencement of the proceedings being delivered by the party to the other party no less than seven days prior to the commencement, during which Lessee and Owner will in good faith seek to meet and confer to mediate the dispute and resolve the Claim without the need for commencement of the proceeding.

22.3 Full Faith and Credit of Judgments. Lessee and all present or future Tribal Courts shall give full faith and credit to any award, order or decree rendered in any arbitration or by any Non-Tribal Court in accordance with this Section 22, and, to the extent reasonably necessary, Tribal Courts will issue orders and exercise those legal powers as may reasonably be necessary to effectuate the same on lands subject to the jurisdiction of Lessee. Lessee's police powers will be available to secure and support any enforcement efforts, and all police or other law enforcement officials of Lessee will carry out any orders that may be entered by a Tribal Court pursuant to this Section 22. Lessee agrees that judgment enforcement remedies generally available throughout the State of Oklahoma may be applied, through Lessee's law enforcement authority, the Federal Bureau of Investigation and the Bureau of Indian Affairs, on lands subject to the sovereign jurisdiction of Lessee with respect to any Claim.

23. **JURY TRIAL.** EACH OF LESSEE AND OWNER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY (UNLESS SUBJECT TO ARBITRATION AS PROVIDED IN THIS AGREEMENT), AND THAT EITHER PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

24. **NON-IMPAIRMENT.** The Lessee shall not adopt, enact, promulgate or otherwise place into effect any law or legal requirement (including, without limitation, any such law or legal requirement relating to taxation, or to licensing of gaming device of Owner) that impairs or interferes, or could impair or interfere, in any manner, with any right or remedy of the Owner under this Lease or any Lease Schedule.

25. **NON-RECOURSE TO INDIVIDUALS.** No officer or officeholder, employee, agent, representative or member of Lessee, as such, shall have any liability for any obligations of Lessee under this Lease or for any claim based on, in respect of, or by reason of, such obligations or their creation. The waiver and release are part of the consideration for the execution and delivery of this Lease.

26. **INDEMNIFICATION.** Except for the gross negligence or willful misconduct of Owner, its employees or agents, Lessee hereby assumes liability for and agrees to indemnify, defend, protect, save and hold harmless Owner, its agents, employees, directors and assignees from and against any and all losses, damages, injuries, claims, penalties, demands and all expenses, legal or otherwise (including reasonable attorneys' fees) of whatever kind and nature arising from (a) the use or operation of the Equipment by Lessee or any third parties, until the Equipment is returned to Owner and (b) any agreement, association or other relationship of Lessee with any third parties concerning the land acquisition, development, construction, operation or provision of equipment to Lessee's Casino Facilities. Any claim, defense, setoff, or other right of Lessee against any such indemnified party shall not in any way affect, limit, or diminish Lessee's indemnity obligations hereunder. Lessee shall notify Owner immediately as to any such claim, suit, action, damage, or injury of which Lessee has notice and shall, at its own cost and expense, defend any and all suits which may be brought against Owner, shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Owner in any such action or actions, provided, however, that Owner shall give Lessee written notice of any such claim or demand. Lessee agrees that its obligations under this Section shall survive the expiration or termination of this Agreement.

27. **NO MANAGEMENT OF GAMING.** NOTWITHSTANDING ANY OTHER POSSIBLE CONSTRUCTION OF ANY PROVISION OF THIS LEASE OR ANY LEASE SCHEDULE, THE OWNER ACKNOWLEDGES AND AGREES (A) THAT IT NEITHER HAS, NOR SHALL IT ASSERT, ANY RIGHTS TO MANAGE ANY GAMING OPERATIONS OF THE LESSEE AND (B) THAT IT WILL NOT INTERFERE WITH THE LESSEE'S RIGHT TO DETERMINE STANDARDS OF OPERATION AND EFFICIENT MANAGEMENT OF THE LESSEE'S GAMING OPERATIONS, INCLUDING, BUT NOT LIMITED TO, BUDGETING MATTERS AND POLICIES RELATING TO GAMING AND CASINO SERVICES.

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IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed on the date set forth by their authorized representatives.

LESSEE:

APACHE TRIBE OF OKLAHOMA
a federally recognized Indian tribe

By: [Signature]
Its: Chairman

OWNER:

KAGD, LLC,
a Nevada limited liability company

By: _____
Its: _____

CERTIFICATION

The above resolution was adopted at a duly called meeting of the Apache Business Committee on December 27, 2007 in Anadarko, Oklahoma by a vote of 3 for and 0 against, a quorum being present.

[Signature]
ALONZO R. CHALEPAH, Chairman

ATTEST:

[Signature]
MARY RIVERA, VICE CHAIRPERSON

[SEAL]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed on the date set forth by their authorized representatives.

LESSEE:

APACHE TRIBE OF OKLAHOMA
a federally recognized Indian tribe

By: *Alonzo H. Chalepah*
Its: Chairman

OWNER:

KAGD, LLC,
a Nevada limited liability company

By: *Kevin M. Keam*
Its: Manager

CERTIFICATION

The above resolution was adopted at a duly called meeting of the Apache Business Committee on December 27, 2007 in Anadarko, Oklahoma by a vote of 3 for and 0 against, a quorum being present.

Alonzo H. Chalepah
ALONZO H. CHALEPAH, Chairman

ATTEST:

Mary Rivera
MARY RIVERA, VICE CHAIRPERSON

[SEAL]

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0024

**LEASE SCHEDULE NO. _____
TO MASTER LEASE AGREEMENT**

This Lease Schedule No. _____ is attached to and made a part of the Equipment Lease Agreement ("Lease") between KAGD, LLC, a Nevada limited liability company ("Owner"), and the Apache Tribe of Oklahoma, a federally recognized Indian tribe ("Lessee"), dated _____, 2007. All capitalized terms which are utilized herein, and which are not otherwise defined herein, shall have the meaning set forth by the Lease.

1. Description of Equipment: The Equipment listed on Attachment A to this Lease Schedule is added to the Equipment leased under the Lease and made subject to the provisions of the Lease.

2. Premises: The Equipment leased under this Schedule will be located at the Lessee's Casino Facilities referred to in the Lease.

3. All of the provisions of the Lease are incorporated by reference herein as if set forth fully herein.

Dated: December 27, 2007

LESSEE:

APACHE TRIBE OF OKLAHOMA,
a federally recognized Indian tribe

By: 
Its: Chairman

OWNER:

KAGD, LLC,
a Nevada limited liability company

By: _____
Its: _____

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0025



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0025

ATTACHMENT A

This Attachment A is attached to and made a part of the Lease Schedule No. _____ to Master Lease Agreement between KAGD, LLC, a Nevada limited liability company ("Owner"), and the Apache Tribe of Oklahoma, a federally recognized Indian tribe ("Lessee"), dated _____, 20__.

Qty.

Description

Type

3

Apache 73-1

RESOLUTION

WHEREAS, The Apache Tribe meeting in a general council this 26th day of August, 1972, and

WHEREAS, It now has come to the attention of the tribe to delegate more authority to the Apache Tribal Business Committee.

NOW THEREFORE BE IT RESOLVED: That the tribe does hereby go on record to delegate its full and complete authority to the Business Committee to transact any and all business related to the tribe involving matters such as tribal land, tribal budget and any other tribal matters relating to government programs and the Bureau of Indian Affairs. FURTHER: That the Land Use Committee of the Apache Tribe is hereby dissolved, since above authority is now delegated to the business committee.

CERTIFICATION

STATE OF OKLAHOMA

ss

COUNTY OF CADDO

We the undersigned chairman and secretary do hereby certify that the foregoing resolution was read and discussed and adopted by a vote of 27 for and 0 against.

In witness wherefore we have set our hand and seals this 26th day August, 1972.

Donald Paul Brown
Chairman

Louis T. Lee
Secretary



4

Res. No. 78-7

RESOLUTION

WHEREAS, The General Council of the Apache Tribe recognizes the need for the Business Committee to have some authority, and needs this authority without the necessity of calling a General Council to act on business for the tribe. According to Article V of the Apache Constitution of the Apache Tribe of Oklahoma and,

WHEREAS, The Apache Tribe of Oklahoma does hereby go on record similar to Resolution 73-1 to delegate authority to transact business related to the Apache Tribe of Oklahoma

NOW THEREFORE BE IT RESOLVED that this foregoing Resolution will go on record for the Business Committee.

CERTIFICATION

The foregoing resolution was duly adopted by the General Council of the Apache Tribe of Oklahoma at a duly called special council Sept. 10, 1977 at Riverside Indian School, Anadarko, Oklahoma by a vote of 32 for 0 against.

ATTEST

CERTIFICATION

Millicent Tapedo
Millicent Tapedo,
Secretary/Treasure

Alfred Chalepah, Sr.
Alfred Chalepah, Sr.
Chairman



5

From: John Graves[jgraves@pope-law.com]
Sent: Tuesday, April 1, 2008 03:47:46 PM
To: McGuinness, Sean M. [SMcGuinness@irlaw.com]; Betsy A. Brown[bbrown@fosheeyaffe.com]
CC: Gallues, Felis M.; Larson, Peter[PLarson@irlaw.com]
Subject: Re: Wells Fargo update

I would like to set up a call to discuss this matter with counsel and Felis for 10:30 CST. The call information will be the same as for our call last evening.

JHG

---Original Message---

From: "McGuinness, Sean M." <SMcGuinness@irlaw.com>

Date: Tue, 1 Apr 2008 14:26:55

To: "John Graves" <jgraves@pope-law.com>, "Betsy A. Brown" <bbrown@fosheeyaffe.com>

Cc: <galluefm@wellsfargo.com>, "Larson, Peter" <PLarson@irlaw.com>

Subject: Wells Fargo update

Dear John and Betsy,

We were able to speak with Felis earlier today to address our conference call from yesterday, during which we discussed a number of issues relating to the Loan between the Apache Tribe of Oklahoma and Wells Fargo.

One of the issues we briefly discussed was authority for the Business Committee to enter into the Loan Documents and associated waiver of sovereign immunity. As you know, this morning we received copies of resolutions 73-1 (passed in 1973) and 78-7 (passed in 1978) of the General Council of the Apache Tribe of Oklahoma. Our review of the resolutions found that the resolutions lack specificity with regard to this loan transaction and do not explicitly include the authority for the Business Committee to waive sovereign immunity of the Tribe. Additionally, we note that the authorizing language does not appear to be included in the 1987 amendment to the Tribe's Constitution. In addition, these obviously predate the enactment of IGRA and modern-day Indian gaming. After discussions with Wells Fargo, our client strongly feels that approval by the General Council of the Tribe is necessary for the approval of the Loan Documents and included waiver of sovereign immunity.

Additionally we discussed the need for confirmation from the NIGC that the gaming facility may be opened for business without further restriction (or otherwise stated that the casino is in good standing with the NIGC and the issues that resulted in the Pre-Opening agreement are no longer at issue). The most recent letter from the NIGC lacks clarity on this issue. We request that the Tribe obtain written documentation from the NIGC confirming that the Borrower may open the Casino for the purpose of gaming and the operation of Class II and Class III gaming without a Pre-Opening Agreement or other agreement of similar effect and without other restriction (other than IGRA, accompanying regulations, the Compact and tribal law). See Loan Agreement Section 8.1(k).

We did address the other concerns you raised, as well. One question the bank has is what insurance does the Tribe currently have in place now (coverages and limits)? Please advise.

As to the trademark assignment issue, at this time, for a deal of this size, Wells Fargo won't require registration, but down the road, for any larger transaction, Wells Fargo would reserve the right to require such registration.

Wells Fargo is also OK with incorporating the Oklahoma UCC for purposes of this transaction.

We will be working on a redline of the Loan Agreement and Security Agreement to address the other concerns you raised. If you could get us the insurance information quickly, that would be most appreciated. Thanks.

Best regards,

Sean

Sean M. McGuinness, Esq.
Lewis and Roca, LLP
Bank of America Plaza
50 West Liberty Street, Suite 410

Wells Fargo v. Apache Tribe of OK
AAA. NO. 71 148 762 10
CLAIMANT'S EX.
18

EXHIBIT
5

CONFIDENTIAL

WFB008727

Reno, NV 89501
(775) 321-3407 direct
(775) 823-2929 fax

For more information about Lewis and Roca LLP, please go to:

www.lewisandroca.com <<http://www.lewisandroca.com/>>

Phoenix (602) 262-5311

Tucson (520) 622-2090

Las Vegas (702) 949-8200

Reno (775) 823-2900

Albuquerque (505) 764-5400

This message is intended only for the use of the individual or entity to which it is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender of this E-Mail by return E-Mail or by telephone.

In accordance with Internal Revenue Service Circular 230, we advise you that if this email contains any tax advice, such tax advice was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer.

6

ASSIGNMENT OF EQUIPMENT LEASE AND RENTS

THIS ASSIGNMENT OF EQUIPMENT LEASE AND RENTS AGREEMENT (this "Assignment") is made as of the 23rd day of June, 2008 by and between **KAGD, LLC**, a Nevada limited liability company (the "Assignor"), and **TGS ANADARKO, LLC**, a Delaware limited liability company (the "Assignee").

WITNESSETH

WHEREAS, Assignor, as the owner, and the Apache Tribe of Oklahoma, as the lessee, (the "Tribe") entered into the Apache – Anadarko Equipment Lease Agreement on December 27, 2007, (the "Lease Agreement") for the lease of certain equipment used to operate casino facility known as the Silver Buffalo Casino on the Tribe's Indian Lands near Anadarko, Oklahoma (the "Casino Facility"). The Lease Agreement is attached hereto as Exhibit "A" and incorporated herein by reference;

WHEREAS, Section 16.1 of the Lease Agreement expressly permits Assignor to assign its rights and interests thereunder;

WHEREAS, Assignee desires to acquire from Assignor all right, title and interest in the Lease Agreement and to assume all of Assignor's obligations and duties; and

WHEREAS, Assignor is willing to convey, sell, and transfer to Assignee all right, title and interest in and to the Lease Agreement upon the terms and conditions hereinafter recited.

AGREEMENTS

NOW, THEREFORE, in consideration of Assignor assigning all right, title, and interest in the Lease Agreement and Assignee assuming all of Assignor's obligations and duties under the Lease Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Assignment.** Assignor hereby absolutely and unconditionally assigns and grants to Assignee, all right, title and interest of the Assignor in, to and under the Lease Agreement, and every modification, amendment or other agreement relating to such Lease Agreement and every guarantee of performance and observance of the covenants, conditions, and agreements to be performed and observed by the other party thereto, together with all rights, privileges and entitlements thereunder and all cash and non-cash proceeds thereof, including, without limitation, the following:

(a) **Rents.** All rents, rent equivalents, income, receivables, revenues, receipts, insurance proceeds, deposits and profits arising from the Lease Agreement and renewals thereof together with all rents, rent equivalents, income, fees, receivables, accounts, profits, and any and all payment and consideration of whatever form or nature received by Borrower or its agents or employees from any and all sources relating to the use and



enjoyment of the Equipment whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

(b) Equipment. All equipment subject to the Lease Agreement now owned or hereafter acquired by Borrower, which is used at or in connection with the operations of the Casino Facility (including, without limitation, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment");

(c) Other. All rights, powers, privileges, options and other benefits of Borrower under the Lease Agreement, including without limitation the immediate and continuing right to make claim for, receive and collect all Rents payable or receivable under the Lease Agreement (and to apply the same to the payment of the Debt), and to do all other things which Borrower or any lessor is or may become entitled to do under the Lease Agreement.

(d) Power of Attorney. Assignor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions necessary to properly manage, preserve and transfer title to the Equipment.

2. Representations and Warranties. Assignor represents and warrants to Assignee as of the date hereof that:

(a) The Lease Agreement is a legal, valid, and binding obligation of Tribe, is in full force and effect without any breach or default thereunder, is fully enforceable against the Tribe in accordance with its terms and constitutes the complete understanding and agreement between Assignor and the Tribe concerning the subject matter thereof.

(b) The Equipment has been properly received, accepted and installed, is in good working order at the location specified in the Lease Agreement and will not be removed from that location without the prior written consent of Assignee.

(c) Assignor has the full power and authority to execute and deliver this Assignment and to perform and comply with the terms and conditions hereof, all of which have been duly authorized. The officer or representative of Assignor executing this Assignment Agreement has been duly authorized and empowered to do so.

(d) Assignor is duly organized, validly existing and in good standing under the laws of the State of Nevada and, is duly qualified to transact business and is in good standing in the State of Nevada.

(e) Other than the Tribe's interest, Assignor's interest in the Lease Agreement is free and clear of liens, claims, and encumbrances.

3. Notice to Other Parties to Contracts. Assignor shall provide notice to the Tribe of this Assignment Agreement and direct the other the Tribe to pay over to Assignee all sums due under the Lease Agreement. Assignor hereby authorizes and directs the Tribe to pay over to Assignee all sums due under the Lease Agreement.

4. Entire Agreement; Amendments. This Assignment Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified, amended or terminated except by a written agreement specifically referring to this Assignment Agreement signed by all the parties hereto.

5. Waivers. No action taken pursuant to this Assignment Agreement, including any investigation by or on behalf of any party hereto shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant, or agreement contained herein or in any ancillary document. The waiver by any party hereto of a breach of any provision of this Assignment Agreement shall not operate or be construed as a waiver of any other or subsequent breach. The waiver by any party of any of the conditions precedent to its respective obligations under this Assignment Agreement shall not preclude it from seeking redress for breach of this Agreement. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

6. Legal and Other Costs. If litigation or other formal legal action becomes necessary to enforce the terms hereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such action.

7. Headings. The paragraph headings contained herein are for the purposes of convenience only and shall not affect the meaning or interpretation of this Assignment Agreement.

8. Further Assurances. Each party hereto shall cooperate, shall take such further action and shall execute and deliver such further documents as may be reasonably requested by any other party in order to carry out the provisions and purposes of this Assignment Agreement.

9. Counterparts. This Assignment Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

10. Governing Law; Venue. This Assignment shall be governed in accordance with the terms and provisions of Section 10.13 of the Credit Agreement.

IN WITNESS WHEREOF, intending to be legally bound hereby, the Assignor has caused this Assignment Agreement to be duly executed, signed and sealed, as of the day and year first above written.

EAGE, LLC

TGS ANADARKO, LLC

By: [Signature]
as Managing Member

By: _____
Its: _____

IN WITNESS WHEREOF, intending to be legally bound hereby, the Assignor has caused this Assignment Agreement to be duly executed, under seal, as of the day and year first above written.

KAGD, LLC

TGS ANADARKO, LLC

By: _____

By:  _____

Its: _____

Its: _____

EXHIBIT "A"

**APACHE - ANADARKO
EQUIPMENT LEASE AGREEMENT**

7

ASSIGNMENT OF EQUIPMENT LEASE AND RENTS

THIS ASSIGNMENT OF EQUIPMENT LEASE AND RENTS AGREEMENT (this "Assignment") is made as of the 23rd day of June, 2008 by and between TGS ANADARKO, LLC, a Delaware limited liability company (the "Assignor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Assignee").

WITNESSETH

WHEREAS, KADG, LLC (as "Owner"), and the Apache Tribe of Oklahoma, as the lessee, (the "Tribe") entered into the Apache – Anadarko Equipment Lease Agreement on December 27, 2007, (the "Lease Agreement") for the lease of certain equipment used to operate a casino facility known as the Silver Buffalo Casino on the Tribe's Indian Lands near Anadarko, Oklahoma (the "Casino Facility"). The Lease Agreement is attached hereto as Exhibit "A" and incorporated herein by reference;

WHEREAS, KADG, LLC transferred all of its right, title and interest in the Lease Agreement to TGS Anadarko, LLC on June 23, 2008. The Assignment of Equipment Lease and Rents between KADG, LLC and TGS Anadarko is attached hereto as Exhibit "B";

WHEREAS, Section 16.1 of the Lease Agreement expressly permits Assignor to assign its rights and interests thereunder;

WHEREAS, Assignee desires to acquire from Assignor all right, title and interest in the Lease Agreement and to assume all of Assignor's obligations and duties; and

WHEREAS, Assignor is willing to convey, sell, and transfer to Assignee all right, title and interest in and to the Lease Agreement upon the terms and conditions hereinafter recited.

AGREEMENTS

NOW, THEREFORE, in consideration of Assignor assigning all right, title, and interest in the Lease Agreement and Assignee assuming all of Assignor's obligations and duties under the Lease Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Assignment**. Assignor hereby absolutely and unconditionally assigns and grants to Assignee, all right, title and interest of the Assignor in, to and under the Lease Agreement, and every modification, amendment or other agreement relating to such Lease Agreement and every guarantee of performance and observance of the covenants, conditions, and agreements to be performed and observed by the other party thereto, together with all rights, privileges and entitlements thereunder and all cash and non-cash proceeds thereof, including, without limitation, the following (hereafter referred to as the "Assigned Interests):

- (a) **Rents**. All rents, rent equivalents, income, receivables, revenues, receipts, insurance proceeds, deposits and profits arising from the



Lease Agreement and renewals thereof together with all rents, rent equivalents, income, fees, receivables, accounts, profits, and any and all payment and consideration of whatever form or nature received by Borrower or its agents or employees from any and all sources relating to the use and enjoyment of the Equipment whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

- (b) Equipment. All equipment subject to the Lease Agreement now owned or hereafter acquired by Borrower, which is used at or in connection with the operations of the Casino Facility (including, without limitation, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment");
- (c) Other. All rights, powers, privileges, options and other benefits of Borrower under the Lease Agreement, including without limitation the immediate and continuing right to make claim for, receive and collect all Rents payable or receivable under the Lease Agreement (and to apply the same to the payment of the Debt), and to do all other things which Borrower or any lessor is or may become entitled to do under the Lease Agreement.
- (d) Power of Attorney. Assignor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions necessary to properly manage, preserve and transfer title to the Equipment.

2. Revocable License. So long as there shall exist no Event of Default (as provided in the Credit Agreement), there is reserved to Assignor a revocable license to collect the Rents and to possess, use and enjoy the Lease Agreement and other Assigned Interests.

3. Representations and Warranties. Assignor represents and warrants to Assignee as of the date hereof that:

(a) The Lease Agreement is a legal, valid, and binding obligation of Tribe, is in full force and effect without any breach or default thereunder, is fully enforceable against the Tribe in accordance with its terms and constitutes the complete understanding and agreement between Assignor and the Tribe concerning the subject matter thereof.

(b) The Equipment has been properly received, accepted and installed, is in good working order at the location specified in the Lease Agreement and will not be removed from that location without the prior written consent of Assignee.

(c) Assignor has the full power and authority to execute and deliver this Assignment and to perform and comply with the terms and conditions hereof, all of which have been duly authorized. The officer or representative of Assignor executing this Assignment Agreement has been duly authorized and empowered to do so.

(d) Assignor is duly organized, validly existing and in good standing under the laws of the State of Delaware and, is duly qualified to transact business and is in good standing in the State of Nevada.

(c) Other than the Tribe's interest, Assignor's interest in the Lease Agreement is free and clear of liens, claims, and encumbrances.

4. Notice to Other Parties to Contracts. Assignor shall provide notice to the Tribe of this Assignment Agreement and direct the other the Tribe to pay over to Assignee all sums due under the Lease Agreement. Assignor hereby authorizes and directs the Tribe to pay over to Assignee all sums due under the Lease Agreement.

5. Entire Agreement; Amendments. This Assignment Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified, amended or terminated except by a written agreement specifically referring to this Assignment Agreement signed by all the parties hereto.

6. Waivers. No action taken pursuant to this Assignment Agreement, including any investigation by or on behalf of any party hereto shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant, or agreement contained herein or in any ancillary document. The waiver by any party hereto of a breach of any provision of this Assignment Agreement shall not operate or be construed as a waiver of any other or subsequent breach. The waiver by any party of any of the conditions precedent to its respective obligations under this Assignment Agreement shall not preclude it from seeking redress for breach of this Agreement. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

7. Legal and Other Costs. If litigation or other formal legal action becomes necessary to enforce the terms hereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such action.

8. Headings. The paragraph headings contained herein are for the purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

9. Further Assurances. Each party hereto shall cooperate, shall take such further action and shall execute and deliver such further documents as may be reasonably requested by any other party in order to carry out the provisions and purposes of this Assignment Agreement.

10. Estoppel Agreement. Assignor shall cause the Tribe to execute and deliver an estoppel agreement, approved by resolution of the Business Committee of the Tribe, which

approves the assignments of Lease Agreement from KAGD, LLC to TGS Anadarko, LLC and this Assignment, confirms that the Lease Agreement is properly assigned to Assignee, and confirms that the Lease Agreement is enforceable by Assignee against the Tribe and which also amends the waiver of sovereign immunity and dispute resolution provisions of the Lease Agreement in the form provided by Assignee.

11. Counterparts. This Assignment Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

12. Governing Law: Venue. This Assignment shall be governed in accordance with the terms and provisions of Section 10.13 of the Credit Agreement.

13. Credit Agreement and Defined Terms. Reference is made to that certain Credit Agreement, dated as of June 23, 2008 (as may be further amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), executed by and among TGS Anadarko LLC, a Delaware limited liability company, and Wells Fargo Bank, National Association. In this document, all capitalized words and terms not otherwise defined herein shall have the respective meanings and be construed herein as provided in Section 1.01 of the Credit Agreement and any reference to a provision of the Credit Agreement shall be deemed to incorporate that provision as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

IN WITNESS WHEREOF, intending to be legally bound hereby, the Assignor has caused this Assignment Agreement to be duly executed, under seal, as of the day and year first above written.

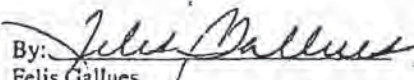
Assignor:

TGS ANADARKO, LLC

Assignee:

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
R.J. Medeiros
Sole Member and President

By: 
Felis Gallues
Vice President

approves the assignments of Lease Agreement from KAGD, LLC to TGS Anadarko, LLC and this Assignment, confirms that the Lease Agreement is properly assigned to Assignee, and confirms that the Lease Agreement is enforceable by Assignee against the Tribe and which also amends the waiver of sovereign immunity and dispute resolution provisions of the Lease Agreement in the form provided by Assignee.

11. Counterparts. This Assignment Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

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IN WITNESS WHEREOF, intending to be legally bound hereby, the Assignor has caused this Assignment Agreement to be duly executed, under seal, as of the day and year first above written.

Assignor:

TGS ANADARKO, LLC

Assignee:

**WELLS FARGO BANK,
NATIONAL ASSOCIATION**

By: _____

R.J. Medeiros
Sole Member and President

By: 

Felis Gallues
Vice President

approves the assignments of Lease Agreement from KAGD, LLC to TGS Anadarko, LLC and this Assignment, confirms that the Lease Agreement is properly assigned to Assignee, and confirms that the Lease Agreement is enforceable by Assignee against the Tribe and which also amends the waiver of sovereign immunity and dispute resolution provisions of the Lease Agreement in the form provided by Assignee.

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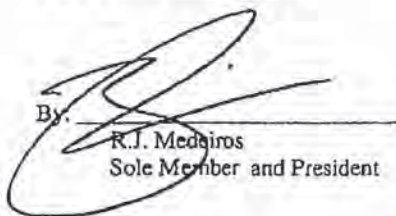
12. Governing Law: Venue. This Assignment shall be governed in accordance with the terms and provisions of Section 10.13 of the Credit Agreement.

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IN WITNESS WHEREOF, intending to be legally bound hereby, the Assignor has caused this Assignment Agreement to be duly executed, under seal, as of the day and year first above written.

Assignor:

TGS ANADARKO, LLC

By: 
R.J. Medeiros
Sole Member and President

Assignee:

**WELLS FARGO BANK,
NATIONAL ASSOCIATION**

By: _____
Felis Gallues
Vice President

approves the assignments of Lease Agreement from KAGD, LLC to TGS Anadarko, LLC and this Assignment, confirms that the Lease Agreement is properly assigned to Assignee, and confirms that the Lease Agreement is enforceable by Assignee against the Tribe and which also amends the waiver of sovereign immunity and dispute resolution provisions of the Lease Agreement in the form provided by Assignee.

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IN WITNESS WHEREOF, intending to be legally bound hereby, the Assignor has caused this Assignment Agreement to be duly executed, under seal, as of the day and year first above written.

Assignor:

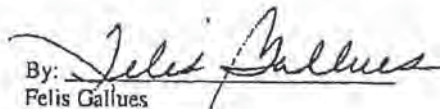
Assignee:

TGS ANADARKO, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____

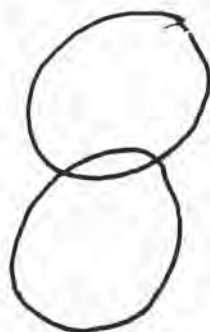
R.J. Medeiros
Sole Member and President

By: 

Felis Gallues
Vice President

EXHIBIT "B"

ASSIGNMENT OF EQUIPMENT LEASE AGREEMENT
FROM KADG, LLC TO TGS ANADARKO, LLC





American Arbitration Association
Dispute Resolution Services Worldwide

**COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION**

MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box.
There is no additional administrative fee for this service.

Name of Respondent Apache Tribe of Oklahoma			Name of Representative (if known) Jon E. Brightmire		
Address P.O. Box 1220			Name of Firm (if applicable) Doerner, Saunders, Daniel & Anderson, L.L.P.		
			Representative's Address Two West Second Street, Suite 700		
City Anadarko	State OK	Zip Code 73005-	City Tulsa	State OK	Zip Code 74103-
Phone No.		Fax No. 405-247-2686	Phone No. 918-591-5258		Fax No. 918-925-5290
Email Address:			Email Address: jbrightmire@dsda.com		

The named claimant, a party to an arbitration agreement dated June 23, 2008, which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

THE NATURE OF THE DISPUTE
Breach of contract, or alternatively, unjust enrichment and declaratory relief

Dollar Amount of Claim \$7,000,000.00	Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input type="checkbox"/> Other
---------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Amount Enclosed \$ 10,200.00 In accordance with Fee Schedule: Flexible Fee Schedule Standard Fee Schedule

PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE:
Active members of OK Bar or retired judges of state or federal judiciary of OK, w/expertise in substantive laws applicable to dispute

Hearing locale Oklahoma (check one) Requested by Claimant Locale provision included in the contract

Estimated time needed for hearings overall: _____ hours or <u>2.00</u> days	Type of Business: Claimant <u>National Banking Association</u> Respondent <u>Indian Tribe</u>
--------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------

Is this a dispute between a business and a consumer? Yes No Does this dispute arise out of an employment relationship? Yes No
If this dispute arises out of an employment relationship, what was/is the employee's annual wage range? Note: This question is required by California law. Less than \$100,000 \$100,000 - \$250,000 Over \$250,000

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Signature (may be signed by a representative) 	Date: <u>5-17-11</u>	Name of Representative James L. Morgan
Name of Claimant TGS Anadarko, LLC	Name of Firm (if applicable) Henderson & Morgan, LLC	
Address (to be used in connection with this case) 345 N. Arlington Avenue	Representative's Address 4600 Kietzke Lane, Suite K228	
City Reno	State NV	Zip Code 89501-
City Reno	State NV	Zip Code 89502-
Phone No. 775-348-2286	Fax No. 775-348-6241	Phone No. 775-825-7000
Phone No. 775-348-2286		Fax No. 775-825-7738
Email Address: rmedeiros@terriblescasinom.com	Email Address: jmorgan@hendersonmorgan.com	

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. Send the original Demand to the Respondent.

Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185.



Signature (may be signed by a representative) Date:			Name of Representative		
<i>Jerome Miranowski</i>			Jerome A. Miranowski		
Name of Claimant			Name of Firm (if applicable)		
Wells Fargo Bank, National Association			Faegre & Benson LLP		
Address (to be used in connection with this case)			Representative's Address		
333 South Grand Avenue, Suite 940			90 South 7 th Street, Suite 2200		
City	State	Zip Code	City	State	Zip Code
Los Angeles	CA	90071-1504	Minneapolis	MN	55402-3901
Phone No.		Fax No.	Phone No.		Fax No.
213-253-3684		213-253-5913	612-766-7000		612-766-1600
Email Address:			Email Address:		
Beth.filipponi@wellsfargo.com			jmiranowski@faegre.com		