SHINGLE SPRINGS BAND OF MIWOK INDIANS

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SHINGLE SPRINGS RANCHERIA
(VERONA TRACT), CALIFORNIA
5281 HONPIE ROAD, PLACERVILLE, CA 95667
P.O. BOX 1340, SHINGLE SPRINGS, CA 95682
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CASINO EMPLOYMENT DISCRIMINATION ORDINANCE

Section 1. Purpose and Effective Date

A. In accordance with Section 12.3(f) of the Amended and Restated Tribal State Compact between The State of California and the Shingle Springs Band of Miwok Indians, this Ordinance is created to provide a fair system for adjudication of claims of discrimination in employment arising solely in connection with employment by the Gaming Authority at the Tribe's Gaming Facility.

Section 2. Definitions

A. **"Administrative Claim"** - means a document prepared by the Tribe, which requests specific information in order for the Claim to be investigated;

B. **"Casino"** - refers to the Red Hawk Casino;

C. **"Claim"** - means a claim of Employment Discrimination arising out of the Claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility, or the Gaming Activities;

D. **"Claimant"** - means a person by or on whose behalf an Employment Discrimination Claim is made under this Ordinance;

E. **"Compact"** - refers to the Amended and Restated Tribal-State Gaming Compact Between The Shingle Springs Band of Miwok Indians and The State of California;

F. **"Employment Discrimination"** - means:

1. Harassment, including sexual harassment, in the workplace that would give rise to a cause of action under federal or California law if it occurred in a workplace other than on the Rancheria;

2. Discrimination in connection with employment at the Gaming Facility on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability that would give rise to a

cause of action under federal or California law if it occurred in a workplace other than on the Rancheria;

a. This shall not include the Tribe giving preference in employment to members of federally-recognized Indian tribes, pursuant to a duly adopted Tribal ordinance.

3. Retaliation for opposing discrimination at the Gaming Facility or for participating in a proceeding initiated under this Ordinance, to the extent that it would give rise to a cause of action under federal or California law if it occurred in a workplace other than on the Rancheria;

G. **"Employment Discrimination Claim"** - means a claim brought by a current or former employee of the Gaming Authority seeking recompense under this Ordinance for employment discrimination that occurred in connection with that person's employment by the Gaming Authority at the Tribe's Gaming Facility;

H. **"Gaming Activities"** - means the Class III Gaming activities authorized under the Compact in Section 3.1;

I. **"Gaming Authority"** – refers to the Shingle Springs Tribal Gaming Authority, a governmental entity of the Tribe that is authorized by Tribal ordinance to operate the Tribe's Gaming Facility;

J. **"Gaming Facility"** - means the Red Hawk Casino;

K. **"Gaming Operation"** - means each economic entity that is licensed by the Tribe, operates games, receives gaming revenues, issues prizes, and pays gaming related expenses. A gaming operation may be operated by the Tribe directly or by a management contractor;

L. **"Ordinance"** - means this Casino Employment Discrimination Ordinance;

M. **"Policy"** - refers to the employment practices liability insurance policy referred to in Section 12.3(f)(1) of the Compact;

N. **"Rancheria"** - means the Shingle Springs Rancheria located in El Dorado County, California;

O. **"Rejected Claims"** – means the Claimant did not complete the Administrative Claim Form properly and/or in its entirety;

P. **"Tribal Council"** - means the Shingle Springs Tribal Council, the Tribe's governing body as established by the Tribe's Articles of Association;

Q. **"Tribal Court"** - means the Shingle Springs Tribal Court established pursuant to Tribal ordinance;

R. **"Tribe"** - refers to the Shingle Springs Band of Miwok Indians, a federally-recognized Indian tribe, or an authorized official or agency thereof;

All terms not otherwise defined in this Ordinance shall have the definition assigned to them in the Compact.

Section 3. Limited Waiver of Sovereign Immunity

A. If the Claimant has exhausted the Tribal Dispute Process, the Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity and any and all defenses with respect to the arbitration or the Tribal Court hearing of any Claim for harassment, retaliation, or employment discrimination arising out of the Claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities. This waiver shall not apply to;

   1. Punitive damages.

   2. The portions of Claims that exceed either three million dollars ($3,000,000) or the Policy limits, whichever is greater.

B. The Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity in connection with the Tribal Court jurisdiction, the arbitrator's jurisdiction and in any state or federal action to;

   a. Enforce the parties' obligation to arbitrate;

   b. Confirm, correct, or vacate the arbitral award rendered in the arbitration in accordance with section 1285 et seq. of the California Code of Civil Procedure, or;

   c. Enforce or execute a judgment based upon the award.

Section 4. Tribal Employment Dispute Resolution Process

The Claimant must first exhaust the Tribal Employment Dispute Resolution Process before he or she may bring a Claim under this Ordinance to Tribal Court or arbitration. The process for the Tribal Employment Dispute Resolution shall be;

Step 1. When a Claimant believes he or she has been the victim of Employment Discrimination, he or she shall have one (1) year from the date that the alleged

discriminatory act occurred to file a written notice with the Vice President ("VP") of Human Resources ("HR") of the Casino.

Step 2. Within fourteen (14) days following notification that a Claimant claims that he or she has suffered Employment Discrimination, the Tribe shall provide written notice by personal service, FedEx signed receipt, or certified mail, return receipt requested, that the Claimant is first required to exhaust the Tribal Employment Dispute Resolution process within one hundred eighty (180) days, and if dissatisfied with the resolution, is entitled at Claimant's sole option to bring an action in Tribal Court or arbitrate the claim before a retired judge in a binding arbitration proceeding, both to be at no cost to the Claimant (excluding any costs incurred by the Claimant on their own, including Claimant's attorney or expert witness fees). The VP of HR shall also provide the Claimant with the Administrative Claim Form.

Step 3. The Claimant must file the Administrative Claim Form with the VP of HR within one-hundred-eighty (180) days of receipt of the written notice ("limitation period") of the Tribe's Employment Dispute Resolution Process, as long as the notice complies with Step 2 above, and the limitation period is prominently displayed on the front page of the notice. Any arbitration or Tribal Court hearings shall be stayed until the completion of the Tribal Employment Dispute Process or one hundred eighty (180) days from the date the Claim is filed, whichever first occurs, unless the parties mutually agree in writing to a longer period.

Step 4. The VP of HR or designee shall investigate the Claim and shall then inform the Claimant in writing, within twenty (20) days of receipt of the Claim, whether the Claim is founded, unfounded, unable to determine or rejected.

Step 5. If the VP of HR denies the Claim, the Claimant has twenty (20) days from the date of the denial letter to request, in writing, to the VP of HR that the Claim be reviewed by the Tribe's Legal Department, otherwise the Claim will be forever barred.

Step 6. If requested by the Claimant, the Tribe's Legal Department shall investigate the Claim and inform the Claimant in writing, within twenty (20) days of receipt of the request, whether the claim has been accepted or denied.

Step 7. The decision of the Tribe's Employment Dispute Resolution Process shall be rendered within one hundred eighty (180) days from the date the claim was filed, unless the parties mutually agree, in writing, upon a longer period. The decision shall be in writing, based on the facts surrounding the dispute, and a reasoned decision.

Step 8. If the Claim is denied, or the Claimant is dissatisfied with the resolution, the Claimant has twenty (20) days from the date of the notice of denial to request that it be

either arbitrated or heard in Tribal Court. The decision to choose either binding arbitration or the Tribal Court system shall be at the sole discretion of the Claimant.

Section 5. Resolution By Tribal Court

If the Claimant requests the dispute be settled in Tribal Court, the Tribe shall consent provided that the following apply;

A. Unless otherwise stated in this Ordinance, all Tribal Court rules and procedures shall apply.

B. The title of the filed court claim shall be "Claimant v. Red Hawk Casino," and all service shall go through the VP of HR.

C. Resolution of the dispute before the Tribal Court system shall be at no cost to the Claimant (excluding any cost, if any, incurred by the Claimant on their own, including Claimant's attorney or expert witness fees).

D. The decision of the Tribal Court shall be final and binding on both parties.

E. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to any state court located within the County or any federal court located in the Eastern District of California in any such action brought with respect to the Tribal Court award.

Section 6. Resolution By Arbitration

If the Claimant requests the dispute be settled in arbitration, the Tribe shall consent provided that the following apply;

A. The claim shall be heard by a single arbitrator, who is a retired judge ("JAMS arbitrator").

B. The arbitration shall be conducted in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS (or, if those rules no longer exist, the closest equivalent).

C. The arbitration shall take place within seventy-five (75) miles of the Gaming Facility, or as otherwise mutually agreed by the parties.

D. Discovery shall be governed by section 1283.05 of the California Code of Civil Procedure.

E. The cost and expenses of arbitration shall initially be borne by the Tribe. However, the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court.

F. The decision of the arbitrator shall be binding on both parties.

G. Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the JAMS arbitrators associated with the Appeal Procedure, regardless of the outcome.

H. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to any state court located within the County or any federal court located in the Eastern District of California in any such action brought with respect to the arbitration award.

Section 7. Applicable Law

California law shall govern all claims of harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility, or the Gaming Activities; with the exception that California law providing for punitive damages shall not apply. Nothing in this provision shall be construed as a submission of the Tribe to the jurisdiction of the California Department of Fair Employment and Housing or the California Fair Employment and Housing Commission.

Section 8. Amendments

This Ordinance, or any section herein, may be amended by a majority vote of the Tribal Council.

Section 9. Severability

If any part of this Ordinance is found void and without legal effect, the remainder of the Ordinance shall continue to remain in full force and effect, as though such part had not been contained therein.

Section 10. Effective Date

This Ordinance shall become effective upon adoption by the Tribal Council and shall replace all existing Employment Discrimination Ordinances thereby encompassing all past, present and future claims.

CERTIFICATION

As a duly-elected official of the Shingle Springs Band of Miwok Indians, I do hereby certify that, at a meeting duly called, noticed, and convened on the 22 day of August, 2013 at which time a quorum of 6 was present, this policy was duly adopted by a vote of 6 FOR, 0 AGAINST, 0 ABSTAINED, and said policy has not been rescinded or amended in any form.

Harold H. Sparks
Tribal Council Chairperson

8-22-13
Date

ATTEST

Kathleen A. Fox
Tribal Council Secretary

8-22-13
Date

SHINGLE SPRINGS BAND OF MIWOK INDIANS
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(530) 676-8010 Office; (530) 676-8033 Fax

RESOLUTION 2013-47

SUBJECT: APPROVAL OF AMENDMENTS TO THE CASINO EMPLOYMENT DISCRIMINATION ORDINANCE.

WHEREAS, the Shingle Springs Band of Miwok Indians (the "Tribe") is a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government; and

WHEREAS, the Shingle Springs Tribal Council is the duly-elected governing body of the Tribe and is authorized to act on behalf of the Tribe; and

WHEREAS, on July 23, 2013 the Amended and Restated Gaming Compact (the "Compact") between the Tribe and the State of California was approved; and

WHEREAS, Sections 12.3 and 12.4 of the Compact require the Tribe to adopt an "Employment Discrimination Ordinance" governing its employment practices for the Gaming Facility; and

WHEREAS, Section 12.3 of the Compact requires the Tribe to grant a limited waiver of sovereign immunity for claims of employment discrimination; and

WHEREAS, the Tribe adopted the "Casino Employment Discrimination Ordinance" on October 23, 2008; and

WHEREAS, the Tribe now desires to update the Casino Employment Discrimination Ordinance in order to comply with sections 12.3 and 12.4 of the Compact; and

WHEREAS, the Ordinance was amended to change the processes and procedures by which a claim of employment discrimination claim may be resolved, including allowing disputes to be resolved in our Tribal Court; and

WHEREAS, the Tribal Council has reviewed the amendments to the Casino Employment Discrimination Ordinance, a copy of which is attached, and has found adoption necessary in order to comply with the Compact.

NOW THEREFORE, BE IT RESOLVED that the Tribal Council hereby enacts and adopts the attached amended "Casino Employment Discrimination Ordinance," as an Ordinance of the Tribe, and authorizes the Chairman or his designee to execute any and all documents and agreements necessary as may be required to give effect to the transactions, herein contemplated, and to take such other actions as may hereby be necessary and appropriate to carry out the obligations there under; and

BE IT FURTHER RESOLVED, the Tribe waives its sovereign immunity to the extent required by the Compact in relation to claims of employment discrimination; and

BE IT FURTHER RESOLVED, that this Casino Employment Discrimination Ordinance supersedes and replaces all previous ordinances or resolutions in conflict with this one; and

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

CERTIFICATION

As a duly-elected official of the Shingle Springs Band of Miwok Indians, I do hereby certify that, at a meeting duly called, noticed, and convened on the 22nd day of August, 2013 at which time a quorum of 6 *was present, this resolution was duly adopted by a vote of* 6 *FOR,* 0 *AGAINST,* 0 *ABSTAINED, and said resolution has not been rescinded or amended in any form.*

Harold H. Hanna
Chairperson

8-22-13
Date

ATTEST:

Kathleen G. Fletcher
Secretary

8-22-13
Date