SHINGLE SPRINGS BAND OF MIWOK INDIANS
Shingle Springs Rancheria, (Verona) Tract, California
5281 Honpie Road, Placerville CA 95667
P.O. Box 1340, Shingle Springs CA 95682
(530) 676-8010 Office; (530) 676-8033 Fax

RESOLUTION 2014-38

SUBJECT: APPROVAL OF AMENDMENTS TO THE CASINO TORT CLAIMS 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 12.5 of the Compact requires the Tribe to adopt a "Casino Tort Claims Ordinance" governing claims of bodily injury, personal injury, or property damage arising out of, connected with or relating to the operation of the Gaming Facility and Gaming Actives; and

WHEREAS, Section 12.5 of the Compact requires the Tribe to grant a limited waiver of sovereign immunity for tort claims; and

WHEREAS, the Tribe adopted the "Casino Tort Claims Ordinance" on October 23, 2008; and

WHEREAS, on August 20, 2013 Tribal Council amended the Ordinance to change the processes and procedures by which a tort claim may be resolved, including allowing disputes to be resolved in our Tribal Court; and

WHEREAS, the Tribe now desires to amend the Ordinance to reflect typographical errors in the Ordinance.

WHEREAS, Tribal Council has reviewed the amendments to the Casino Tort Claims Ordinance, a copy of which is attached, and has found adoption necessary in connection with the Tribal Court's jurisdiction.

NOW THEREFORE, BE IT RESOLVED that the Tribal Council hereby enacts and adopts the attached amended "Casino Tort Claims 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 Tribal Court's jurisdiction in relation to tort claims; and

BE IT FURTHER RESOLVED, that this Casino Tort Claims 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 April, 2014 at which time a quorum of 7 was present, this resolution was duly adopted by a vote of 7 FOR, 0 AGAINST, 0 ABSTAINED, and said resolution has not been rescinded or amended in any form.

Chairperson

April 22, 2014
Date

ATTEST:

Secretary

April 22, 2014
Date

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SHINGLE SPRINGS RANCHERIA
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CASINO TORT CLAIMS ORDINANCE

Section 1. Purpose

In accordance with Section 12.5(b) 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 process for Claimants to resolve Tort Claims alleged to have happened while visiting the Tribe's Gaming Facility.

Section 2. Definitions

Wherever used in this Ordinance the terms defined in this section shall have the following meaning.

A. "**Administrative Claim Form**" - means a document prepared by the Tribe, that 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 bodily injury, personal injury or property damage arising out of, connected with, or relating to the operation of the Tribe's Gaming Operation, Gaming Facility or the Gaming Activities, including but not limited to injuries resulting from the entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility;

D. "**Claimant**" - means a person by or on whose behalf a claim for recompense for bodily injury, property damage or personal injury is made pursuant to 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. **"Gaming Activities"** - means the Class III Gaming activities authorized under the Compact in Section 3.1;

G. **"Gaming Facility"** - refers to the Red Hawk Casino;

H. **"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;

I. **"Ordinance"** - means this Casino Tort Claims Ordinance;

J. **"Policy"** - refers to the commercial general liability insurance policy referred to in Section 12.5(a) of the Compact;

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

L. **"Third Party Administrator ("TPA")"** – refers to the organization that processes general liability claims on behalf of Red Hawk Casino and its insurance carrier.

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

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

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

P. **"Tort Claim"** - means a claim of bodily injury, personal injury or property damage arising out of, connected with, or relating to the operation of the Tribe's Gaming Operation, Gaming Facility or the Gaming Activities, including but not limited to injuries resulting from the entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility.

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

Section 3. Sovereign Immunity

If the Claimant has exhausted the Tribal Dispute Process, the Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity with respect to the arbitration or the Tribal Court hearing of claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's

Land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility. This waiver shall not apply to;

1. Punitive damages.

2. The portions of claims that exceed either ten million dollars ($10,000,000) or the Policy limits, whichever is greater.

Section 4. Tribal Dispute Resolution Process

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

Step 1. When a Claimant believes they have suffered an injury or damage covered by this Ordinance they must inform the Risk Manager of the Casino.

Step 2. Upon notice that a Claimant claims to have suffered an injury or damage covered by this Ordinance, the Risk Manager shall provide notice by personal service, FedEx signed receipt, or certified mail, return receipt requested, that the Claimant is required within one hundred eighty (180) days to first exhaust the Tribal Dispute Process and if dissatisfied with the resolution, entitled to file his or her Claim in Tribal Court or arbitrate the Claim de novo before a retired judge. The Risk Manager shall also provide the Claimant with an Administrative Claim Form.

Step 3. The Claimant must file the Administrative Claim Form with Risk Management within one hundred eighty (180) days of receipt of written notice of the Tribal Dispute Process, as long as the notice complies with Step 2 above and the 180 day limit 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 Dispute Process or one hundred eighty (180) days from the date the Claim is filed in the Tribal Dispute Process, whichever first occurs, unless the Claimant receives written notice from the TPA exercising an extension of time. If the Claim is not being processed by the TPA, an extension of time may be exercised by mutual agreement of both parties.

Step 4. The Risk Manager 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, rejected, denied, or submitted to the TPA for claims handling.

Step 5.

a) If the Risk Manager and/or TPA rejects the claim, the Claimant will be advised of any errors, in writing, and shall be allowed to resubmit the Administrative Claim Form within ten (10) days of the notice date; or

b) If the Risk Manager denies the Claim, the Claimant has twenty (20) days from the date of the denial letter to request, in writing, that the Risk Manager submit the Claim for review by the TPA, otherwise the Claim will be forever barred.

Step 6. If requested by the Claimant, the TPA shall investigate the Claim and inform the Claimant, in writing whether the Claim has been accepted or denied. Any forms Claimant may receive from the TPA must be returned within fourteen (14) days of receipt.

Step 7. If the TPA denies the Claim, the Claimant has twenty (20) days from the date of the denial letter to request, in writing, to the Risk Manager that the Claim be reviewed by the Tribe's Legal Department, otherwise the Claim will be forever barred.

Step 8. 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 9. If the Tribe's Legal Department denies the Claim, 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. If the Claimant selects arbitration, he or she will be required to pay half of the cost. If the Claimant selects Tribal Court it will be at no cost to the Claimant.

Section 5. Resolution By Tribal Court

If the Claimant requests the dispute be settled in Tribal Court, the Tribe shall consent provided 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 Risk Manager.

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 expressly waives its sovereign immunity and its right to assert sovereign immunity in connection with the Tribal Court's jurisdiction and in any action to;

1. Enforce the parties' obligation to hear the matter in Tribal Court;

2. Confirm, correct, modify, or vacate the judgment or award rendered in Tribal Court;

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

Section 6. Resolution By Arbitration

If the Claimant requests the dispute be settled in arbitration, the Tribe shall consent provided 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. Discovery shall be governed by section 1283.05 of the California Code of Civil Procedure.

D. The cost and expenses of arbitration shall be initially borne equally by the Tribe and the Claimant. Each party shall pay their share of the cost at the time of Claimant's election of arbitration. The arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court.

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

F. 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.

G. The Tribe expressly waives its sovereign immunity and its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to;

1. Enforce the parties' obligation to arbitrate;

2. Confirm, correct, modify, or vacate the arbitral award rendered in the arbitration;

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

Section 7. Applicable Law

California tort law shall govern all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's Land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, with the exception that California law providing for punitive damages shall not apply.

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 take effect on the date it is approved by the Tribal Council and shall replace all existing Tort Claims 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 22nd day of April, 2014 at which time a quorum of **7** was present, this ordinance was duly adopted by a vote of **7** FOR, **0** AGAINST, **0** ABSTAINED, and said ordinance has not been rescinded or amended in any form.

Tribal Council Chairperson — *April 22, 2014* Date

ATTEST

Tribal Council Secretary — *April 22, 2014* Date