

01-2020

**Resolution Accepting and Ratifying Intergovernmental Agreement with
Catawba Indian Nation on Behalf of Cleveland County**

WHEREAS, N.C.G.S. § 153A-11 and N.C.G.S. § 153A-12 authorize the Board of Commissioners to enter into contracts on behalf of the County; and

WHEREAS, N.C.G.S. § 153A-12 authorizes the Board of Commissioners to exercise the powers and functions of the County, including the power to enter into contracts; and

WHEREAS, N.C.G.S. § 153A-12 further authorizes the Board of Commissioners to pass resolutions as to how its powers and functions are to be exercised, including the delegation of such powers and functions; and

WHEREAS, the Catawba Indian Nation (the "Nation") is seeking to develop an entertainment complex (the "Project") on lands located in Cleveland County; and

WHEREAS, the County and the Nation have together developed an Intergovernmental Agreement ("IGA") which will serve their mutual interest in promoting cooperation between the County and the Nation and will provide for the general welfare of all people in the County and within the proposed Project site with respect to issues including public finance, health and safety, and land use and development; and

WHEREAS, the County, in open session during its regularly scheduled meeting on October 1, 2019, authorized Commissioner Johnny Hutchins to execute the IGA on behalf the County; and

WHEREAS, the Clerk to the Board has now received the fully executed copy of the Agreement from the Nation; and

WHEREAS, the fully executed IGA is attached to this resolution as "Exhibit A";

THEREFORE, THE CLEVELAND COUNTY BOARD OF COMMISSIONERS RESOLVES THAT:

I. The Board of Commissioners approves of Commissioner Hutchins's signing of the IGA and, to the extent necessary, ratifies the IGA on behalf of Cleveland County;

2. The Clerk shall enter this resolution and the attached IGA into the minutes of this meeting of the Board of Commissioners.

Adopted this the 21st day of January, 2020.

By: _____
Susan K. Allen, Chairman
Cleveland County Board of Commissioners

ATTEST:

April Crotts, Deputy Clerk
Cleveland County Board of Commissioners

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
CLEVELAND COUNTY, NORTH CAROLINA
AND THE
CATAWBA INDIAN NATION

This **Intergovernmental Agreement** (the "**Agreement**") is made on this the 5th day of December, 2019 (the "**Effective Date**"), by and between **Cleveland County, North Carolina**, a political subdivision of the State of North Carolina (the "**County**"), and **the Catawba Indian Nation**, a federally recognized Indian Tribe headquartered in Rock Hill, York County, South Carolina (the "**Nation**") (each a "**Party**" or collectively the "**Parties**").

WITNESSETH:

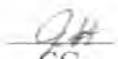
WHEREAS, the Nation, as an exercise of its sovereign authority, is seeking to acquire into trust status certain lands within its aboriginal territory that lie within the boundaries of the County;

WHEREAS, the Nation desires to develop an entertainment complex (the "**Project**"), on said lands consisting of approximately sixteen (16) acres located in the County (the "**Property**"), and more specifically located at Exit No. 5, United States Interstate 85 South, off of N.C. State Road No. 2283 (known locally as Dixon School Road);

WHEREAS, while the current plans for the Project are fluid and uncertain, the Parties nonetheless wish to delineate in this Agreement the terms and conditions pertaining to the development, construction, management, and operation of the Project;

WHEREAS, if the Nation is legally authorized to develop its Project on the Property, the Parties wish to set forth their understanding concerning the relationship between the Parties as to the development and operation of the Project and the Property;

WHEREAS, the County and the Nation have a mutual interest in promoting cooperation between the County and the Nation that will provide for the general welfare of all people in the County and within the Property with respect to issues including public finance, health and safety, and land use and development;


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WHEREAS, the County and the Nation respect each other's governmental responsibilities and priorities for serving the people living within the County and the people visiting or working within the Property;

WHEREAS, the County and the Nation wish to enter into this Agreement, which respects the jurisdiction of both Parties, to ensure orderly and efficient delivery of services and to provide similar governing standards between the two jurisdictions;

WHEREAS, the Nation, in entering into this Agreement, is not limiting its sovereign powers but rather using them to advance the well-being of the Catawba people and surrounding communities; and

WHEREAS, the County and the Nation are entering into this Agreement in reliance on the commitments made herein.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Nation agree as follows:

Section 1. Property Subject to this Agreement. This Agreement concerns the Nation's development and operation of the Project and use of the Property in the County. A map and legal description of the Property is attached hereto and incorporated herein as Exhibit "A".

Section 2. Definitions.

The following terms shall have the following meanings for purposes of this Agreement:

"Accommodation" means a hotel room, a motel room, a residence, a cottage, or a lodging facility of any kind that is designed and used for occupancy by an individual.

"County" means Cleveland County, North Carolina, duly organized under the laws of the State of North Carolina.

"Gaming Activities" or "Gaming" means (1) the conduct of Class II or Class III gaming as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et. seq.*; (2) the conduct of gaming that would otherwise meet the Class II and Class III definitions in the Indian Gaming Regulatory Act even if that act was not applicable; or (3) the conduct of gaming as defined under the relevant authorizing statutes, regulations, and/or judicial opinions. "Gaming Activities" shall be deemed to have commenced as of the date on which gaming operations are first made available to the public.

Provided, that the Nation shall provide the County with written notice of the commencement of Gaming Activities on the Property within ten (10) days of such commencement.


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"Imminent or Immediate Threat" means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

"Nation" means the Catawba Indian Nation, a federally recognized tribe, duly organized under its Constitution.

"Project" means that entertainment, lodging, and/or gaming complex and all associated improvements, buildings, facilities, roads, structures, and fixtures of any kind that are now or may after the Effective Date be built, erected, placed, installed, or otherwise situated on or in the Property.

"Property" means that real estate within the County that is described in that survey map a complete and accurate copy of which is attached hereto as Exhibit "A", and all improvements located thereon.

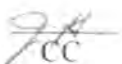
"Public Health and Safety" means matters related to environmental conditions, occupational conditions, water quality, wastewater disposal, solid waste disposal, and food and beverage services.

"State" means the State of North Carolina.

"Sheriff" means the Cleveland County Sheriff's Office.

"Tribe" or "tribal" refers to the Nation or an aspect of the Nation, as the case may be.

Section 3. County Fees and Service Payments; Sales Taxes. The Parties recognize and agree that the Nation will require a number of services from the County, including, but not limited to, law enforcement services, fire protection services, and public health and safety services. The Parties further recognize that operation of the Project on the Property will result in a number of impacts to the County services and an increased financial burden to the County. The Parties recognize and agree that, although the Nation, and its Project and Property are not subject to County taxation, it is in the interest of both Parties to insure a sufficient revenue stream to the County to enable the County to provide such services and to be able to meet the increased burdens resulting from the Nation's operation of the Project. It is the intent of the County and the Nation that, to the fullest extent possible, the Nation will bear the same financial burdens as would any other non-Indian business in the County, subject to the conditions and limitations set forth herein. Therefore, notwithstanding that the Nation does not owe any taxes to the County, the Nation agrees



to pay the County the following PILOT Payments (as defined in Section "3(A)" below), fees, service payments, and Sales Taxes:

A. **Real and Personal Property.** Upon completion of the Project, the Nation agrees to make annual payments to the County in lieu of real and personal property taxes assessable with respect to the Property ("**PILOT Payments**"). *Provided*, that the Project shall be deemed to have been completed upon the opening of a temporary or permanent entertainment and/or gaming facility to the public ("**Project Completion**") and that the Nation, within fifteen (15) days of the occurrence of such completion, shall provide the County Manager with written notice of completion of the Project. Each PILOT Payment shall be equal to the real and personal property tax assessments that could be lawfully imposed in accordance with the methodology that the County would lawfully employ if the Property were subject to County real and personal property taxes. Each PILOT Payment shall be calculated by the County Tax Assessor in the same manner as is used for such calculations for similar commercial real and personal property located within the County, and shall be comprised of an annual assessment multiplied by a rate as from year-to-year lawfully established by the County. The County, by July 15 of each calendar year, shall provide the Nation with written notice of the amount of each PILOT Payment due with respect to that year (and of the methodology whereby the amount due has been calculated), which amount shall be due and payable by no later than January 15 of the following year. (If any such PILOT Payment has not been paid in full by such date, then simple interest on the unpaid balance thereof shall accrue from such date until paid at the annual rate of four percent (4.0%).) The County agrees to receive each PILOT Payment and agrees that PILOT Payments made shall be deemed to compensate the County for the tax liability that would otherwise apply if the Property was subject to taxation. *Provided*, however, if the foregoing method of determining the amount of the PILOT Payments is deemed unlawful by the United States government, then the Parties shall promptly meet and confer in good faith for the purpose of agreeing to an alternative method for determining the amount of the PILOT Payments that is consistent with all applicable law and that results in payment to the County that is substantially similar to the amount of the foregoing PILOT Payments.

I. **Annual PILOT Payments.** For the purpose of calculating each PILOT Payment, the Nation agrees to permit the County Tax Assessor, or his/her designee, access to the Property as required to assess the value of the Property. However, access to the Property shall not

exceed the minimal level of access required to complete the assessment of all other real and personal property within the County. The County agrees that the real and personal property assessments of the Property shall be made in a manner consistent with the County's real and personal property assessment procedures applicable to other property owners located in the County.

2. Rate.

The methods of determining the tax rate(s) and calculating the amount of each PILOT Payment shall be the same as the methods used to determine the tax rate(s) and calculating the amount of all taxes due for all other property in the County.

3. Disputes.

Any dispute arising under this Section 3 is subject to the dispute resolution procedures set forth in Section 11 and the limited sovereign immunity waiver set forth in Section 11(G). *Provided*, however, that, for any dispute over the County's calculation of the amount of any PILOT Payment in which the Nation claims that the amount of any PILOT Payment should be other than the amount that has been calculated by the County Tax Assessor and billed by the County, the Parties agree as follows :

- a. The Nation may contest the annual assessment before the County Board of Equalization and Review and, if unresolved to the satisfaction of the Nation, the Nation may then appeal the Board of Equalization and Review's determination to the State Property Tax Commission, and may seek judicial review of the determination of the State Property Tax Commission in the North Carolina Court of Appeals or as otherwise provided by law.
- b. Pending the final outcome of any appeal and/or the exhaustion of all rights to appeal, as the case may be, the Nation shall timely remit the PILOT Payment(s) in dispute to the County indicating its disagreement with such Payment(s). If the final determination on the contested PILOT payment(s) is that the Nation owes less than the contested PILOT Payment(s) that the Nation has made to the County, then the County shall, within thirty (30)

days of the exhaustion of all rights of appeal to any court/forum of competent jurisdiction, remit the difference to the Nation.

B. Local Infrastructure Fee. The Nation shall remit to the County a local infrastructure fee in the amount of six percent (6%) of the gross receipts derived from the rental of Accommodations located on or in the Property, which shall include the rental cost of reserving each Accommodation, as well as all fees and charges of any kind that are charged by or on behalf of the Nation with respect to such reservations, including any Complimentary Accommodation Gross Receipt, but not including tribal taxes ("**Local Infrastructure Fee**"). Each complimentary, no charge Accommodation shall be deemed to generate a maximum gross receipt of one hundred dollars (\$100.00) per day ("**Complimentary Accommodation Gross Receipt**"). The maximum Complimentary Accommodation Gross Receipt, as of the first and every subsequent anniversary of the Effective Date of this Agreement, shall be adjusted by a percentage equal to the percentage by which the "Consumer Price Index for All Urban Consumers" for "All Items" (the "CPI") published during the month immediately preceding each such anniversary by the Bureau of Labor Statistics of the U.S. Department of Labor has increased or decreased as compared to the CPI that was published during the month immediately preceding such anniversary of the prior year. (The purpose of such periodic adjustment in the maximum Complimentary Accommodation Gross Receipt is to ensure that such Receipts match the pace of inflation/deflation as measured by increases/decreases in the CPI.)

The Nation shall remit said Local Infrastructure Fee to the County in the same manner and at the same time(s) as provided by law for the remission of occupancy taxes to the County by hotels generally. The Nation may also impose a separate occupancy tax for hotel stays in addition to this Local Infrastructure Fee. *Provided*, that the Nation, by March 1 of each year if so requested by the County, shall provide the County with complete and authentic copies of documents indicating the gross receipts derived from the rental of Accommodations located on the Property during the preceding calendar year so that the County may assess the Nation's compliance with this Section 3(B).

C. Development Fee. In lieu of ordinary development fees, the Nation shall pay permitting and inspection fees and other administrative fees related to the development and construction of the Project (the "**Development Fee**"). Upon submission to the County of detailed building design, architectural plans, and engineering plans, the Development Fee shall be


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calculated in accordance with the County's Unified Development Ordinance, as amended. A minimum payment of One Hundred and Fifty Thousand Dollars (\$150,000.00) toward such Development Fee shall be paid upon submission of the building design, architectural plans, and engineering plans. The balance of the Development Fee, if any, shall be paid within thirty (30) days of Project Completion. The Development Fee is intended to support the costs of administration, plan reviews, and inspections for, among other aspects of building construction and operation, buildings, food and beverage facilities, and water systems, including drinking water, waste water, and pool facilities.

D. Sales Taxes. The Nation shall collect and remit to the County a sales tax in the amount of two percent (2%) of the gross receipts derived from the sale of food and beverages, retail sales, entertainment activities (including but not limited to "cover" and/or admission charges), and other miscellaneous sales of goods and services on the Property (collectively, the "Sales Taxes"). Payment of such Sales Taxes to the County shall be the responsibility of the Nation regardless of whether such Sales Taxes have been collected from customers who make purchases at or in the Project or on or in the Property. Such Sales Taxes, however, shall not apply to the sale of Native arts, crafts, goods, and other materials sold in the Nation's specially run Native gift shop on the Property. The Sales Taxes due hereunder shall be arrived at through the same methodology as if the Nation and transactions occurring on the Property were subject to State and County sales taxes, and shall be due and payable as of the twenty-first (21st) day of each month with respect to Sales Taxes that were collected by the Nation during the preceding month. *Provided*, that the Nation, on or about March 1 of each year, shall provide the County with complete and authentic copies of the necessary records to support the calculation of the gross receipts of the Nation that are derived from Sales Taxes generated on the Property during the preceding calendar year so that the County may assess the Nation's compliance with this Section 3(D).

E. Tax Parity. The Nation agrees that it is not seeking to secure a tax advantage for itself or other entities operating on the Property. Accordingly, the Nation agrees that it shall not permit untaxed sales of any tobacco products, motor fuel, alternative fuel, or alcoholic beverages on the Property. The Nation agrees that the fees assessed and the tax rates on the foregoing shall be no less than those fees and rates that are assessed by any lawful authority, whether by federal, state, tribal, or local government, and otherwise paid by any non-tribal entities or purchasers within the County. If the Nation does not charge or collect such taxes and fees that would otherwise be


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levied with respect to tobacco products, motor fuel, alternative fuel or alcoholic beverages, then payment of such taxes to the County shall be the responsibility of the Nation, which shall remit an amount equal to such taxes to the appropriate taxing authority, including the County to the extent provided herein.

F. Equal Protection. The Nation and the County agree that, for purposes of collecting the PILOT payment(s), Local Infrastructure Fee, and Sales Taxes (collectively, the "**Fees**"), that the Property and all transactions occurring on the Property shall be deemed to be transactions not involving an Indian tribe and shall be deemed to occur on real and personal property that is subject to the County's taxation jurisdiction (regardless of whether such property is held in trust or restricted fee status), subject to the exceptions and limitations set forth herein. The Nation agrees that it shall not contest this characterization in any writing or proceeding for collection of these Fees. Accordingly, should the County, in good faith, amend the rates and methodology for assessment and calculation of any of the Fees with respect to businesses within the County, then such rates and methodology for assessment and calculation shall be applied to the Property and all transactions occurring on the Property; however, any such rates and fees shall not exceed the rates and fees applied generally to businesses in the county.

Section 4. Public Health and Safety. The Nation's operation of the Project on the Property will be subject to the same workplace, public health, safety and fair employment rules as required under North Carolina law. To this end, the Nation agrees to the following:

A. Before opening to the public any business operations on the Property, the Nation shall adopt, by resolution, and comply with standards that are no less stringent than North Carolina and related federal work place, labor, and occupational safety and health (commonly known as "OSHA") standards. The Nation shall provide the County with a meaningful opportunity to review and comment on any such proposed standards before they have been adopted by the Nation.

B. The Nation agrees to adopt and comply with the following health and safety standards of the kind that would apply were the Property and Project owned and operated by a non-tribal commercial enterprise:

1. Public health standards for food and beverage handling that are consistent with standards prescribed by North Carolina statutes, regulations, and related administrative guidance.

2. Water-quality and safe drinking water standards applicable in North Carolina by operation of State or federal law.
3. Building standards that are no less stringent than applicable building codes, fire codes, plumbing, electrical and related codes applicable in the County by either North Carolina law or County ordinance, as would apply to the construction of any similar buildings or facilities elsewhere in Cleveland County.
4. County ordinance and North Carolina laws dealing with fire safety pertaining to the operation, inspection, and maintenance of the Project.

C. The Nation will allow inspections of the Project by County inspectors, during the Project's hours of operation upon at least twenty-four (24) hours' advance written notice to the Nation by the County Manager or his/her designee(s) to assess compliance with the standards established by this Agreement. Provision of such notice shall be sent via e-mail to the Nation's primary point of contact on the Project and by overnight courier mail to the address of the Nation identified in Section 13. Nothing herein shall be construed as a submission of the Nation to the jurisdiction of such County inspectors; however, any violation of the standards may be treated as a violation of this Agreement.

D. The Parties shall consult and cooperate with one another regarding public health and safety issues of mutual concern. The Parties shall each identify a representative to serve as its respective point of contact for coordinating the handling of events that pose a threat to public health or safety. The Parties' responsibilities under this subsection shall include, at a minimum, timely notification to the other Party's point of contact of any perceived public health or safety concerns, the mutual exchange of ideas on how to respond to the concern(s), timely updates on any action being taken to address the concern(s) by a Party, and a written report summarizing with reasonable detail how the situation was ultimately addressed and what steps, if any, may be necessary or recommended to mitigate or prevent the re-occurrence of the public health or safety concern in the future. The Parties agree that this coordination function is an integral step in mitigating threats to public health and safety that may obviate the need for arbitration. The Parties also agree that such compliance with this subsection is a condition precedent to the expedited arbitration procedure for threats to public health and safety set forth in Section 11.D. of this Agreement in the event that arbitration is deemed necessary.


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E. If at any time the County has grounds to determine that a public health nuisance exists, the County shall notify the Nation's representative, and if not resolved within five (5) days of provision of such notice, or such additional period as agreed upon by the Parties, then the County may invoke the expedited arbitration procedure under Section 11.D. of this Agreement.

F. Should there be an immediate and imminent threat to public health or safety, as determined by an appropriately designated State public health agency or official or the County Manager, then the County may, upon notifying the Nation's representative, conduct an emergency visit to the Property and take whatever action is necessary, consistent with North Carolina law that would apply were the Property and Project owned and operated by a non-tribal commercial enterprise, including but not limited to seeking immediate injunctive relief in the North Carolina General Court of Justice, to mitigate the immediate and imminent threat. Immediately following the emergency visit, the County shall provide a written explanation to the Nation of the basis for the emergency visit, the actions taken, and identify any additional actions that may be necessary and/or recommended in follow-up to the emergency visit and which must be carried out, if at all, in close coordination and with the approval of the Nation, which may be withheld only on an objectively-reasonable basis.

G. Upon completion of the final building design and development plans for the Project, as approved by the Nation, and before the commencement of any construction activity, the Parties agree to meet and confer for the purpose of negotiating and entering into a separate memorandum of agreement to set forth in greater detail how the Parties will coordinate on the public health safety concerns addressed in this Section 4.

Section 5. Public Safety.

A. **Emergency Medical Services.** The Nation acknowledges the importance of having adequate emergency medical services for any persons on the Property. The County, through its Emergency Medical Services Department and volunteer rescue squads, provides emergency medical services to the entire County. The County shall provide emergency medical services to the Property and the Project as requested. The Nation shall reimburse the County for the reasonable charges incurred in providing emergency medical services to or on the Property and/or the Project on the same terms and conditions as those that would be charged and could be enforced by the County were the Property and Project owned and operated by a non-tribal commercial enterprise.

B. Law Enforcement. The Parties recognize the Nation has responsibility for maintaining order and security on the Property. The Parties recognize the increase in traffic and attendance connected with the Project will create added burdens on the Sheriff in terms of patrolling and responding to calls for assistance. Because some of that activity will take place on the Property, it is expected that cross training in the mutual roles and respective authorities of both the Nation (and any Nation-owned entities) and the Sheriff will be necessary. To the greatest extent possible, the County Sheriff's Office will seek to hire a qualified member of the Nation as a civilian employee to facilitate communication between the Parties. The Nation agrees to reimburse the County for the reasonable added costs to its law enforcement resources for the Project and the Property to the same extent as would reasonably be expected were the Project and Property owned and operated by a non-tribal commercial enterprise. Additional reasonable costs for training for the Sheriff to provide law enforcement to the Project will be borne by the Nation.

C. Fire Services. The Nation acknowledges the importance of having adequate fire services for any persons on the Property. The County, through its County Emergency Management Department and County Volunteer Fire District, provides fire services to the entire County. The Parties agree that the County will provide fire services to the Property as and when requested. The Nation shall reimburse the County for the reasonable charges incurred in the provision of fire-protection services to the Property and/or the Project on the same terms and conditions as those that would be charged and could be enforced by the County were the Property and Project owned and operated by a non-tribal commercial enterprise.

D. Upon completion of the final building design and development plans for the Project, as approved by the Nation, and prior to the commencement of any construction activity, the Parties agree to enter into a separate memorandum of agreement, or alternatively to renegotiate this Section 5 pursuant to Section 15.I.3, to address specific services, standards, support, mitigation, coordination, reporting, and funding requirements for emergency services, law enforcement services, fire services, and fire safety. Failure to enter into a separate memorandum of agreement or to renegotiate this Section 5 in good faith and to the mutual agreement of the Parties shall be grounds for default under this Agreement, and subject to the dispute resolution provisions set forth in Section 11.

Section 6. Civil and Criminal Jurisdiction. The County, notwithstanding this Agreement, shall retain the right to invoke and seek enforcement of all civil and criminal laws with respect to


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any person, not a member of the Nation, in a manner consistent with applicable federal and State law as of the Effective Date, and as from time to time may be amended, except to the extent explicitly provided otherwise by this Agreement. The County shall promptly notify the Nation of any suspected, alleged, or confirmed violation(s) of civil and/or criminal laws carried out by a tribal member. This provision shall not be construed so as to create criminal or civil jurisdiction over any person except as it presently exists under federal and State law. As a sovereign Indian tribe exercising inherent powers of self-governance, the Nation shall exercise exclusively jurisdiction over its tribal members, subject to applicable federal law. Notwithstanding the foregoing, if the Nation so designates, the County may exercise civil and criminal jurisdiction over members of the Nation, to the extent permitted by applicable federal law. **Provided**, notwithstanding this Section 6, that law enforcement officers employed by the Nation, the County or the Cleveland County Sheriff are authorized to arrest and detain, on an emergent basis, any person, citizen or non-citizen of the Nation, in accordance with the U.S. Constitution and all other applicable law that apply to arrest and detainment of persons without first having to obtain the consent of the other Party or determine which Party has jurisdiction to arrest and detain in accordance with this Agreement, to the extent permitted by applicable federal law.

In order to administer and enforce State laws as set forth above, the County may investigate the activities of non-tribal employees, vendors, or guests who may be in violation of State criminal or civil laws, and the County shall report suspected violations of State laws to the appropriate State prosecution authorities and the Nation. Pursuant to such investigation, the County may seek subpoenas, in accordance with State law, to compel production of any books, papers, correspondence, memoranda, agreements, or other documents or records that are relevant or material to the investigation.

The County shall have jurisdiction to commence prosecutions of non-tribal members for violation of any applicable State civil or criminal law or regulatory requirement to the extent authorized under applicable law.

Section 7. Public Utilities. The Nation shall obtain utility services, including but not limited to electric services, water, wastewater, and solid waste disposal, consistent with State law and in accordance with County ordinances and/or franchise agreements.

Section 8. Compulsive Behavior. Within ninety (90) days of commencement of Gaming Activities on the Property, the Nation shall make a one-time payment to the Carolina Community



Health Partnership ("CCHP") or the County Health Department in the amount of fifty thousand dollars (\$50,000.00) for the treatment of compulsive behavior, including problem gambling or alcoholism. Thereafter, the Nation will make annual contributions to the CCHP or the County in the amount of twenty thousand dollars (\$20,000.00) for the same purpose, which shall be due and payable as of each anniversary of the Effective Date that occurs after the commencement of Gaming Activities on the Property. *Provided*, that the annual contributions to CCHP or the County prescribed by this Section 8 shall increase after the first annual contribution, on a year-over-year basis, at the annual rate of two percent (2%).

Section 9. Prohibited Activities. The Nation shall use its best efforts to prohibit and prevent the occurrence of the following activities on the Property and shall adopt an ordinance, ordinances, and/or regulations prohibiting them and providing for their enforcement:

A. Persons under the age of twenty-one (21) years shall not be allowed to gamble or remain in any room or area in which Gaming Activities are being conducted. Individuals under the age of twenty-one (21) years may pass through gaming rooms or areas only if they are in route to a non-gaming room or area of the Property.

B. Persons under the age of twenty-one (21) years shall not be allowed to purchase, consume, or otherwise possess alcoholic beverages. All alcoholic beverage service shall be in accordance with State law, and subject to the Nation's liquor control laws, as may be enacted in the future and amended from time to time; *provided* that the Nation's Liquor Ordinance has been duly approved by the Secretary of the Interior; *and provided* further that the Nation will not offer alcoholic beverages at no charge or as a complimentary service to its patrons unless other similarly situated business establishments in the State are legally authorized to offer alcoholic beverages at no charge or as a complimentary service to their patrons.

Section 10. County Support for Project. In consideration of the obligations undertaken by the Nation herein, and specifically of provision to the County of the "General Council Resolution" prescribed by Section 15(C) below, the County shall provide written correspondence in support of the Project to the United States Department of the Interior, Bureau of Indian Affairs ("BIA"), the State of North Carolina and any other governmental agencies or officials whose approval or cooperation must be obtained, as reasonably requested by the Nation, and the County shall promptly respond to any inquiries from these and other such governmental agencies related to the Project and Property. *Provided, however*, that the County may withdraw such "support" for

the Project if the Secretary of the United States Department of the Interior disapproves of this Agreement or determines that it is unacceptable or unenforceable; but, in the event of such disapproval or determination, the Parties shall promptly meet and confer in good faith for the purpose of agreeing to an amendment of this Agreement that renders it valid and enforceable in accordance with all applicable law.

Section 11. Dispute Resolution. All disputes arising under this Agreement, except as prescribed by Section 3(A)(3) and Section 4.F. above, shall be resolved solely in accordance with this Section 11, and subject to the following:

A. **Meet and Confer; Non-Binding Mediation.** If the County or the Nation believes that the other Party has committed a possible violation of this Agreement, then it may request in writing of the other Party that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the possible violation within fifteen (15) days of the date of service of said request; *provided that* if the complaining Party believes that the possible violation creates a threat to public health or safety, then the complaining Party may proceed directly to arbitration as provided in Section 11.D. *Provided,* if one Party believes that the other Party has breached this Agreement, that the former may also ask the latter to engage in non-binding mediation in good faith in accordance with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions, the reasonable costs of which shall be borne equally by the Parties. The Party asked to engage in such mediation will do so in good faith in accordance with such Rules.

B. **Notice of Disagreement.** Within thirty (30) days of holding the conference prescribed by Section 11.A., subject to any agreed extension of that deadline to accommodate the completion of non-binding mediation in accordance with Section 11.A., if the complaining Party is not satisfied with the result of the conference, then the complaining Party shall provide written notice to the other Party identifying and describing any alleged violation of the Agreement ("Notice of Disagreement"), with reasonable particularity, and proposing the action(s) that it believes are required to remedy the alleged violation.

C. **Response to Notice of Disagreement.** Within fifteen (15) days of service of a Notice of Disagreement, the recipient Party shall provide a written response denying or admitting the allegations made in the Notice of Disagreement, and, if the truth of the allegations is admitted, then setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to

serve a timely response shall entitle the complaining party to proceed directly to arbitration, as provided in Section 11(D). below.

D. Binding Arbitration Procedure. Subject to prior compliance with Section 11.A. above, and the requirements of Sections 11.B. and 11.C, except as provided in Section 11.E., either Party has the right to initiate binding arbitration as the sole mechanism by which to initiate enforcement of the terms of this Agreement. Such arbitration shall be conducted in accordance with the following procedures (the "Arbitration"):

I. Selection of the Arbitration Panel.

(a) Disputes Involving Recovery or Liability of Less Than \$250,000. The Arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (collectively, the "AAA Rules") and shall, except as set forth below, be conducted by one (1) arbitrator who shall have been selected pursuant to the AAA Rules; *provided*, that he/she must be a licensed attorney who has been actively engaged in the practice of law for at least the last ten (10) years, and during such ten years has been a member in good standing of the bar of the State, and who has served as an arbitrator and rendered a written opinion in at least one (1) completed arbitral proceeding within the last five (5) years and has demonstrated expertise in federal Indian law generally and in federal Indian gaming law specifically if the issue in dispute involves federal Indian gaming law. The Parties and the arbitrator shall maintain strict confidentiality with respect to the Arbitration so as to protect the proceedings and any matters, materials, or information disclosed therein from disclosure to any third party, except to the extent required by law.

(b) Disputes Involving Recovery or Liability of \$250,000 or More. If either Party advises the other Party that it reasonably believes that the issue in dispute to be submitted to Arbitration involves potential recovery by a Party, or potential liability of a Party, in an amount exceeding two hundred and fifty thousand dollars (\$250,000.00), exclusive of costs of arbitration/litigation and reasonable attorneys' fees, then the Arbitration shall be conducted by a panel of three (3) arbitrators (the "Panel"). Each

Party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon a third arbitrator, the third arbitrator shall be selected by the AAA. Each arbitrator shall satisfy the qualifications of the arbitrator in accordance with Section 11.D.1.a. The Parties and Panel shall maintain strict confidentiality with respect to the Arbitration so as to protect the proceedings and any matters, materials, or information disclosed therein from disclosure to any third party, except to the extent required by law. The written decision of the Panel in which two or three members of the Panel join in writing shall control the Arbitration.

2. Arbitration Award. The Arbitration shall be held in Cleveland County, North Carolina, unless otherwise agreed to by the Parties in writing. The arbitrator(s) shall be empowered to grant all legal and equitable remedies and relief that could be secured in a State court of law, including injunctive relief; *provided*, that the arbitrator(s) shall not have the power to award punitive damages or damages of a kind that cannot be obtained for breach of contract in accordance with North Carolina law. The award shall be made within nine (9) months of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in Arbitration shall be final and binding on the Parties.

3. Discovery. Consistent with the expedited nature of arbitration, each Party will, upon the written request of the other Party, promptly provide the other with copies of documents, provided such documents are directly relevant to the issues raised by any claim or counterclaim, and which may be redacted as necessary to protect confidential and/or sensitive information. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator(s), who shall decide to grant leave based on the need of the requesting Party and the burden of such discovery in light of the nature and complexity of the dispute, and such determination shall be conclusive when rendered by a single arbitrator under

Section 11.D.1.a. or the majority of the Panel under Section 11.D.1.b. All discovery shall be completed within forty-five (45) days following the appointment of the arbitrator(s), unless the Parties agree in writing to an extension.

4. Request for Hearing and/or Trial. The arbitrators shall set the matter for a hearing and/or trial upon the written request of a Party. The requesting Party must also provide three (3) days' written notice to the other Party prior to making said request. The arbitrators may also independently recommend that the Parties set the matter for a hearing and/or trial, which recommendation shall be non-binding and left to the Parties' discretion.

5. Arbitration Decision. The resulting decision shall be in writing and explain the reason(s) for the decision. Judgment on the decision of the arbitrator or Panel, may be entered in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes), or in the Catawba Indian Nation Tribal Court, if the Nation has established one with jurisdiction over the matter(s) and subject to the provisions set forth in Section 11.F set forth below. The costs and expenses of the Arbitration shall be shared equally by and between the Parties.

6. Enforcement. An action to compel Arbitration or to enforce any award or specific performance ordered in an Arbitration may be brought in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes) or in the Catawba Indian Nation Tribal Court, if the Nation has established one with jurisdiction authority over the matter(s) and subject to the provisions set forth in Section 11.F set forth below, and in all appellate courts to which appeals lie as provided by law.

E. Emergency Arbitration for Public Health or Safety Nuisances or Threats. If either Party reasonably believes that, in violation of this Agreement, the other's conduct has caused or will cause a nuisance or threat to public health or safety, the resolution of which cannot be

delayed for the time periods otherwise specified in this Section 11, then the complaining Party may proceed directly to arbitration under this Section 11.E, without regard to the requirements set forth in Sections 11.A–D, which shall be referred to as "Emergency Arbitration" and administered by the American Arbitration Association in accordance with the AAA Rules on Emergency Measures of Protection and conducted in accordance with the following procedures:

1. Notice of Demand for Emergency Arbitration. A Party in need of emergency relief under this Section 11.E shall notify the AAA and other Party in writing of the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the basis for the complaining Party's entitlement to emergency relief. Such notice shall be sent via email with read receipt to the other Party's primary point of contact on the Project and by overnight mail to the Party's address identified in Section 13.
2. Appointment of Emergency Arbitrator. Within one (1) business day of receipt of notice as provided in Section 11.E.1, the AAA shall appoint a single emergency arbitrator designated to rule on emergency actions. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed by the acting Party, to affect the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one (1) business day of the communication by the AAA to the Parties of the appointment.
3. Schedule of Emergency Arbitration. The emergency arbitrator shall as soon as possible, but no later than two (2) business days of appointment, establish a schedule for consideration of the request for emergency relief, as well as the provision of any limited, expedited discovery or document production. Such a schedule shall provide a reasonable opportunity to all parties to be heard and may provide for alternative proceedings than a formal hearing, such as via tele- or video-conference or on written submissions.
4. Emergency Arbitration Award. If after consideration the emergency arbitrator is satisfied that the Party seeking the emergency relief has shown that the other's conduct has caused or will cause a nuisance or threat to public health or safety that requires emergency relief, and that the seeking

Party is entitled to such relief, then the emergency arbitrator may enter an order or award granting said relief and stating the reason(s) therefore. The Emergency Arbitration award shall be binding on the Parties.

5. Appeal of Emergency Arbitration Award. Any application to modify or appeal an award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator so long as the Emergency Arbitration is active, which shall not exceed a period of thirty (30) days following the appointment of the emergency arbitrator. If after such thirty (30) days the emergency dispute has not been resolved or an application to modify an award of emergency relief is still pending, then the Parties shall initiate binding Arbitration procedures in accordance with Section 11.D to resolve the dispute. The emergency arbitrator shall have no further power to act after the selection of an Arbitration panel pursuant to Section 11.D.1, *provided* that the Parties may agree to name the emergency arbitrator as the Arbitration arbitrator or a member of the Panel, depending on the amount of recovery or liability involved in the dispute.
6. Emergency Arbitration Costs. The costs associated with an Emergency Arbitration shall be equally borne by the Parties unless it is determined by the emergency arbitrator or by an arbitrator or Panel in directly resulting subsequent Arbitration that the complaining Party acted unreasonably and without justification in requesting the Emergency Arbitration, in which case the complaining Party shall be solely responsible for the costs of the Emergency Arbitration.
7. Emergency Award Enforcement. An action to enforce any order or emergency relief ordered in an Emergency Arbitration shall be brought in the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina (or in any other venue of the North Carolina General Court of Justice prescribed by the North Carolina General Statutes) or in the Catawba Indian Nation Tribal Court, if the Nation establishes one with jurisdiction authority over the matter(s) and subject to the provisions set forth in Section 11.F.

F. Periodic Review of Tribal Court Status and Extension of Tribal Court Jurisdiction; Comity. The Parties hereby agree that, five (5) years from the Effective Date of this Agreement, there shall be a meeting between the Nation and the County to discuss whether the Nation has established a "Tribal Court" of competent jurisdiction that shall be added as a forum for the enforcement of the terms of this Agreement. The establishment of such Tribal Court shall be evidenced by the adoption of a Catawba Indian Nation Judicial Code that shall include, at a minimum, chapters on Tribal Court Structure (including jurisdiction), Judicial Qualifications and Appointments (including that each judge must be a member in good standing of a state bar who shall have engaged in the practice of law or served as a judge on a regular and full-time basis during the ten (10) years next-preceding appointment as a judge of the Tribal Court, and Court Procedures (including appeals)). No such Tribal Court shall be recognized as a forum for the enforcement of the terms of this Agreement unless the courts of North Carolina have extended comity to tribal courts or the State of North Carolina, by statute duly adopted or another method recognized by law, has recognized the validity of the judgments and decrees of such Tribal Court and deemed them to be as enforceable as those of the district courts of the United States within the State of North Carolina as set forth in Section 1-237 of the North Carolina General Statutes as in effect as of the Effective Date, as from time to time amended. If such Tribal Court is found to have been so established and if its judgments and decrees have been so recognized and declared so enforceable, then the extension of Tribal Court jurisdiction over disputes arising from the terms of this Agreement shall not be unreasonably denied by the Parties. However, if the Parties find that no such Tribal Court has been established by the fifth (5th) anniversary of the Effective Date of this Agreement, then the Parties agree to meet every five (5) years after such fifth (5th) anniversary to assess the status of the Tribal Court, if any, until such time as a Tribal Court has been established or this Agreement is no longer in effect, whichever shall come first.

G. Limited Waiver of Sovereign Immunity. The Nation hereby expressly, unequivocally, and irrevocably waives its sovereign immunity for the limited purpose of enabling the County to enforce the terms of this Agreement, including but not limited to doing so by seeking appropriate injunctive relief and/or judicial enforcement of any award and/or specific performance ordered in Arbitration in the United States District Court for the Western District of North Carolina, the Superior Court Division of the North Carolina General Court of Justice sitting in Cleveland County, North Carolina, or in Catawba Indian Nation Tribal Court, if the Nation has


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established one in accordance with this Agreement. The Nation further waives any Tribal Court exhaustion requirements, regardless of when such requirements may have arisen or may arise in the future. This limited waiver of immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the County. Nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Nation with respect to any party other than the County. Except as expressly provided herein, nothing in this limited waiver of immunity shall be construed as a waiver or consent to the levy of any judgment, lien, or attachment upon any property or interest in property of the Nation other than as set forth in this Section 11(G). Pursuant to this limited waiver of sovereign immunity, a judgment or award against the Nation may be satisfied only from the Property, the Project and the revenues of the Project, and in no instance shall any enforcement of any kind whatsoever be allowed against any other assets of the Nation

Section 12. Indemnification.

A. The Nation agrees to and shall indemnify, defend, protect, and hold harmless the County, its elected officials, officers and employees acting in their official capacities from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission, or negligence of the Nation or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the Nation's part to be performed under the terms of this Agreement or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the County which challenges the County's approval, execution, or delivery of this Agreement; and in any case, any action or proceeding brought against the County by reason of any such claim, the Nation upon notice from the County shall have the option to defend the same at the Nation's expense by counsel reasonably satisfactory to the County. However, in the event that the Nation does not elect to defend the action or proceeding, the County shall defend the same at the Nation's expense, and shall consult with the Nation during the pendency of the action or proceeding. In any case, offers of settlement must be approved by the County and the Nation, which approval shall not be unreasonably withheld.

B. The County agrees to and shall indemnify, defend, protect, and hold harmless the Nation, its elected officials, officers, and employees acting in their official capacities from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and



expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission, or negligence of the County or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the County's part to be performed under the terms of this Agreement or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the Nation which challenges the Nation's approval, execution, or delivery of this Agreement; and in any case, any action or proceeding brought against the Nation by reason of any such claim, the Nation upon notice from the County shall have the option to defend the same at the County's expense by counsel reasonably satisfactory to the Nation. However, in the event that the County does not elect to defend the action or proceeding, the Nation shall defend the same at the County's expense, and shall consult with the County during the pendency of the action or proceeding. In any case, offers of settlement must be approved by the Nation and the County, which approval shall not be unreasonably withheld.

Section 13. Notices.

Any notice required under this Agreement shall be sent to the following:

Cleveland County
Attn: County Manager
P. O. Box 1210
Shelby, North Carolina 28151-1210

Catawba Indian Nation
Attn: Chief William Harris
996 Avenue of the Nations
Rock Hill, South Carolina 29730

Copy to:
Ward and Smith, P.A.
Attn: Grant B. Osborne, Esq.
Suite 300
82 Patton Avenue
Asheville, North Carolina 28801

Copy to:
Gregory A. Smith, Esq.
Hobbs Straus Dean & Walker, LLP
2120 L Street NW, Suite 700
Washington, DC 20037

Copy to:
Jeffrey C. Harris, Esq.
Tribal Attorney, Catawba Indian Nation
996 Avenue of the Nations
Rock Hill, South Carolina 29730

and/or to such other respective addresses as may be designated by notice given in accordance with this Section 13.

Section 14. Insurance.

The Parties understand that it is the Nation's practice to maintain appropriate insurance coverage for itself and all entities of the Nation. Consistent with that practice, the Nation agrees to



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obtain and maintain, with responsible insurance carriers licensed to do business in the State of North Carolina, insurance (including coverage of public liability and property loss damage) satisfactory to the County covering the Property and all structures constructed thereon naming the Nation and all Nation-entities as insured parties. The tort liability insurance coverage shall be at least two million dollars (\$2,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) annual aggregate. In addition, the Nation will maintain liquor liability coverage of at least two million dollars (\$2,000,000.00) per occurrence. Certificates evidencing such coverage shall be delivered to the County annually.

Section 15. Miscellaneous Provisions.

A. Effective Date and Term.

This Agreement shall become effective on the Effective Date and shall remain in effect through and including the earlier of (a) the date that is twenty (20) years after the date on which "Gaming Activities" were first made available to the public on the Property or (b) December 31, 2049, unless otherwise terminated by the mutual written consent of the Parties or for cause as provided in and subject to Section 15.B.

B. Termination.

This Agreement shall immediately terminate upon issuance of a legally binding "Indian Land Opinion" by the National Indian Gaming Commission ("NIGC") or the U.S. Department of the Interior concluding that the Property does not qualify for lawful gaming under federal law, except to the extent that such determination is stayed pending any appeal. *Provided, however*, in the event of such a termination, that all fees payable to the County as of or before the date of such termination shall remain payable and be paid in full within ninety (90) days of such termination.

No breach or violation of any of the terms of this Agreement by either Party shall operate to void or terminate or provide grounds for termination hereof, it being the intent of the Parties that the provisions of this Agreement shall be subject to specific performance, and injunctive relief shall be provided to cure anticipatory breaches prospectively, and damages shall be awarded to redress any harm occasioned by a breach; *provided, however, that* if a Party cannot or will not conform to the requirements of this Agreement as evidenced by a pattern of documented violations of the terms set forth herein and/or a series of documented violations that pose a serious threat to public health, safety or welfare, then this restriction on termination shall not apply.

C. Authorization.


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The County and the Nation each represent and warrant that each has performed all acts required by its own laws for the validity of adoption of this Agreement, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this Agreement on behalf of such Party is duly and fully authorized to so execute and deliver this Agreement. A copy of the Resolution of the Executive Committee of the Catawba Indian Nation authorizing this Agreement on behalf of the Nation is attached as Exhibit "B". Said resolution shall (1) expressly approve and authorize this Agreement by the Executive Committee on behalf of the Nation, (2) direct the execution, delivery and performance of this Agreement by the Chief on behalf of the Nation, (3) independently grant and approve an express, unequivocal and irrevocable limited waiver of the Nation's sovereign immunity to suit, (4) consent to the jurisdiction of the courts specified in the Agreement, (5) consent to the application of the laws of the State of North Carolina to govern the Agreement, (6) consent to arbitration, (7) waive the Nation's right to exhaustion of tribal remedies, and (8) waive venue and jury trial (items (3) – (7) set forth in this Section 15(C) are referred to herein as the "**Dispute Resolution Provisions**"). The Executive Committee's resolution also will recite the Constitutional provisions authorizing the Executive Committee's actions in enacting the Executive Committee resolution, authorizing this Agreement and granting the Nation's limited waiver of sovereign immunity and consenting to the Dispute Resolution provisions, including (a) that the Executive Committee is authorized pursuant to the authority granted the Executive Committee in the Catawba Constitution and Bylaws, which provides that it "shall be the duty of the Executive Committee ... to act on behalf of the General Tribal Council at such times as said Council is not in possession and to have charge of all routine matters which shall arise during such recess, including ... such other matters as may be delegated to it by the General Council [Bylaws, Article II, Section 3]" and (b) the authority of the Chief pursuant to the Catawba Constitution and Bylaws which provides that the Chief "shall at all times have general supervision of the affairs of the General Council and Executive Committee and such matters as naturally pertain to the general welfare of the community [Bylaws, Article I.1.(a)]". *Provided, further,* that although the Executive Committee has the authority to enter into this agreement, it is the Executive Committee's practice to brief the General Council on major matters and to seek an expression of support. Whereas the County has also requested that the General Council provide a resolution of


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support, the Executive Committee, at the next regular meeting of the General Council to be held in **July of 2019**, or at a "special meeting" of the General Council called and held by no later than **December 31, 2019** (the "General Council Resolution Deadline"), in accordance with Section 4 of Article III of the "Constitution and By-Laws of the Catawba Nation of South Carolina" adopted by the Nation on or about August 30, 1975 (the "**Constitution**"), shall brief the General Council on this Agreement and secure the General Council's written resolution of support in accordance with Articles III and IV of the Constitution (the "**General Council Resolution**"). Although not required as a matter of Catawba law, for the sake of completeness, this resolution will expressly affirm all of the terms of this Agreement and the authority of the Executive Council to have negotiated and authorized the Chief to sign it. The Executive Committee shall use its best efforts, before any such regular or special meeting, to recommend and promote this Agreement to the General Council and encourage members thereof to appear and vote at such meeting to approve such a General Council Resolution, for the purpose of securing the General Council Resolution. If the Nation has failed to secure the General Council Resolution by December 31, 2019 (unless that date has been extended in writing by agreement of the County), then such failure shall not void this Agreement or render it voidable by the Nation, but shall render it voidable by the County alone if the County advises the Nation in writing by no later than February 15, 2020 (or such later date as may be agreed by the Parties), that the County has elected to void this Agreement. The County shall agree to at least one (1) extension of the General Council Resolution Deadline through and including July 31, 2020, at the request of the Nation. Notwithstanding the foregoing, if the General Council expresses concerns regarding the Agreement, at the request of the Executive Committee, the Parties shall work in good faith to address those concerns and questions including if necessary renegotiating the terms of this Agreement.

D. Interpretation.

This Agreement shall be interpreted as though jointly drafted by the Parties.

E. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and applicable federal law.

F. Severability.

Any term of this Agreement ruled by the arbitrator(s) or a court of competent jurisdiction to be invalid or unenforceable will be severed, and the remainder of this Agreement will be


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enforced. The Parties agree to enter into good faith negotiations to replace the invalid provision(s) with a valid provision(s), the economic effect of which comes as close as possible to that of the invalid provision(s). If the Fees in Section 3 or any other provision are held invalid or unlawful in a way that results in the diminution of any payment or financial obligation of the Nation to the County, then the Parties agree to negotiate in good faith to try to replace the invalid Fees provision(s). If the Parties are unable to successfully renegotiate the invalid Fees provision(s), then, notwithstanding Section 11, but still subject to the limited waiver of sovereign immunity in Section 11(G), then the Parties agree that the arbitrator shall determine how to proceed with arbitration to address the conflict.

G. Good Faith and Fair Dealing.

This Agreement includes an implied covenant of good faith and fair dealing in accordance with North Carolina common law.

H. Captions.

The captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provisions hereof.

I. Amendment or Modifications; Reopener.

1. This Agreement may not be amended or modified except by a writing signed by the County Manager and the Chief of the Nation pursuant to such authority as may be required by law and the Nation's governing constitution and bylaws. However, either Party may request that the other Party renegotiate one or more of the terms of this Agreement if, but not limited to, the following circumstances apply:

- a. There is a significant change in applicable circumstances, including but not limited to a change in federal or State law that directly or indirectly relates to the Party's expectations under this Agreement and/or the application of the federal Indian Gaming Regulatory Act to the Nation as provided by law;
- b. That change materially impacts that Party; and
- c. That change could not have been reasonably anticipated at the time of entering into this Agreement.


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Provided, however, if the United States Government identifies an environmental concern, the Parties will then promptly negotiate a separate "environmental matters agreement", to address mitigation of related environmental issues, if any; and that the County reserves the right to negotiate with the Nation for the purpose of reaching agreement with the Nation regarding terms and conditions pertaining to mitigation of environmental impacts that may be identified in the future as a result of environmental review processes required by law.

2. A request to renegotiate one or more of the terms of this Agreement will be made in writing, delivered to the other Party. The request will specify the basis for the request. If the request is determined to meet the requirements for renegotiation pursuant to this subsection, the Party will commence to renegotiate in good faith. However, except for the obligations to renegotiate as is set forth in this subsection, neither Party is obligated to agree to a new Agreement or to any new terms or conditions as a result of the renegotiation process.

3. Notwithstanding subsections I.1 and I.2, upon completion of the final building designs and development plans for the Project, and prior to the commencement of any construction activity, if the Parties do not enter into a separate memorandum of agreement under Section 5.D, then the Parties shall renegotiate Section 5 in good faith and to the mutual agreement of the Parties. Failure to renegotiate under this provision shall result in an automatic default of this Agreement, subject to the dispute resolution provisions set forth in Section 11.

4. Notwithstanding subsection I.1 and I.2, if there is a material change in federal or State law, or if the Nation enters into a compact with the State of North Carolina that is inconsistent with this Agreement, then the Parties, within thirty (30) days of receipt by either Party of a written demand therefor, shall meet and confer for the purpose of engaging in good-faith negotiations for the purpose of revising this Agreement to the extent needed to accommodate such material change and/or inconsistency. If a Party refuses to engage in such negotiations, then that Party shall be deemed in violation of this Agreement, which shall automatically trigger the dispute resolution provisions set forth in Section 11.

J. Complete Agreement.



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This Agreement represents the entire integrated agreement between the Parties and supersedes all past agreements and all negotiations, representations, promises or agreements, either written or oral, made during the course of negotiations leading to this Agreement.

Section 16. Section 81 Review by the Department of the Interior.

If it is determined by the United States government that a Section 81 review is necessary, then within one hundred twenty (120) days of execution of this Agreement, or within three (3) days of receipt by the Nation of a written Indian Lands determination by the National Indian Gaming Commission, whichever is sooner, the Nation will submit this Agreement to the United States Department of the Interior for either (a) approval of the Agreement pursuant to 25 U.S.C. §81, or (b) a written response that this Agreement does not require approval under 25 U.S.C. §81 to be enforceable. If the Department of the Interior determines that Section 81 approval is necessary and denies approval of this Agreement, then this Agreement shall be subject to review and appropriate action by the Department of the Interior, including possible termination and the possible recovery of payments made hereunder.

Section 17. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Section 18. Miscellaneous. If after the Effective Date of this Agreement, the Nation and State of North Carolina enter into a Compact for Gaming on the property (a "Compact"), to the extent that that Compact requires payments to the County that address the PILOT, services and other payments required under this Agreement, such Compact payments shall be used to offset the Nation's obligations herein, to enable the Nation to avoid having to make duplicative payments under such Compact and this Agreement. Furthermore, any inconsistent terms between this Agreement and any future Compact will, to the extent required by law, be construed in favor of the Compact.

IN WITNESS WHEREOF, officers of the County and the Nation, pursuant to authority duly given by the governing bodies of each in accordance with applicable State law, ordinances and Tribal law, have executed this Agreement as of the Effective Date.



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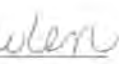

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**CLEVELAND COUNTY,
NORTH CAROLINA**


By: 
Johnny Hutchins, Commissioner
Cleveland County Board of Commissioners

Approved as to form:


By: 
Elliot Engstrom, Esq.
Deputy County Attorney
Cleveland County

Attest: 
Phyllis Nowlen,
Cleveland County Clerk

THE CATAWBA INDIAN NATION

By: 
William Harris, Chief
Catawba Indian Nation

Approved as to form:

By: 
Jeffrey Harris, Esq.
Tribal Governance Attorney
Catawba Indian Nation


Attest: 
Roderick Beck, Secretary/Treasurer
Catawba Indian Nation

EXHIBIT A

BK 41 12 85

UNOFFICIAL DOCUMENT

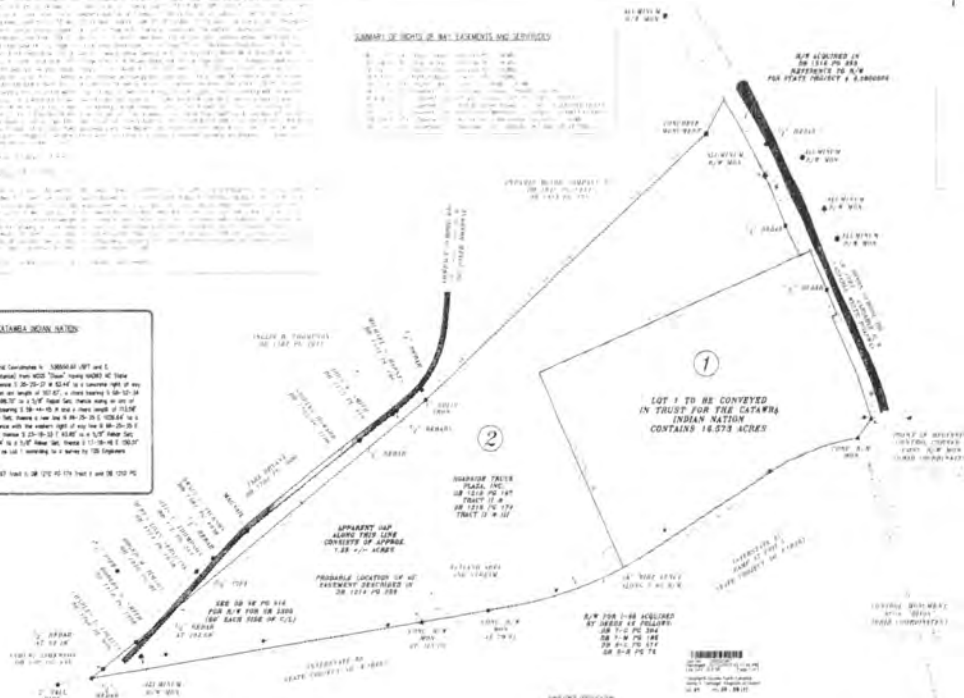
SUMMARY OF RIGHTS OF WAY EASEMENTS AND EASEMENTS

UNOFFICIAL DOCUMENT

LEGAL DESCRIPTION
SECTION 18, TOWNSHIP 12 N, RANGE 12 E, COUNTY OF...
ACRES 18.573



DESCRIPTION OF LOT 1 TO BE CONVEYED IN TRUST FOR THE CATAWBA INDIAN NATION...
SECTION 18, TOWNSHIP 12 N, RANGE 12 E, COUNTY OF...
ACRES 18.573



TITLE MAP - NO SCALE
SOURCE OF TITLE COMMITMENT: CHICAGO TITLE INSURANCE
COMMITMENT NUMBER: 17-00170
EFFECTIVE DATE: OCT. 10, 2017
BUYER'S AND SELLER'S REPRESENTATIVES: TGS, ROADSIDE TRUCK PLAZA, INC.

LOT DATA
LOT 1: 18.573 ACRES
LOT 2: 91.973 ACRES
TOTAL SITE AREA - 110.546 ACRES +/- (APPROX. 0.38 ACRES +/- IN N/W)

TGS
Roadside Truck Plaza, Inc.
C-0275



EXHIBIT B

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**RESOLUTION
OF THE
GENERAL COUNCIL OF THE
CATAWBA INDIAN NATION**

November 16, 2019
Resolution Number: 20191116

Resolution Authorizing the Executive Committee to Continue to Act on Gaming Matters

WHEREAS, the Catawba Indian Nation ("the Nation") was restored to its Federal Status on October 23, 1993 (Public Law 103-116); and

WHEREAS, the General Council is the governing body of the Nation pursuant to Article 3 Section 1 of the Catawba Indian Nation Constitution; and

WHEREAS, the Executive Committee has the duty to act on behalf of the General Council when not in session and has charge of all routine matters which shall arise pursuant to Article 1 Section 3 of the Constitution and By-laws of the Nation; and

WHEREAS, the Executive Committee may also "perform such duties as may from time to time be conferred on it by the General Council" under Article III, Section 5 of the Nation's Constitution; and

WHEREAS, pursuant to its inherent authority provided by the Constitution and By-laws of the Nation and pursuant to the direction of the General Council, the Executive Committee has acted on and entered into discussions and agreements related to the development of the Nation's economy, including on gaming related matters; and

WHEREAS, the Executive Committee is responsible for the Nation's gaming proposals, including but not limited to developing a gaming operation in Cleveland County, and has engaged in extensive discussions with State, Local and private parties regarding necessary agreements in furtherance of this responsibility; and

WHEREAS, the General Council finds that it is in the Nation's best interest to reaffirm the authority of and expressly authorize the Executive Committee to act on gaming related matters so as to ensure compliance with the Nation's Constitution and By-laws, prevent unnecessary delays in the approval of gaming-related agreements, including inter-governmental agreements, and, thus, promote the economic development and self-determination of the Catawba Indian Nation.

NOW, THEREFORE BE IT RESOLVED, that the General Council hereby expressly authorizes the Executive Committee, acting through the Chief, to negotiate and sign agreements with other entities on behalf of the Nation including but not limited to financing, leasing, inter-governmental and other gaming-related agreements that may include express but limited waivers of sovereign immunity, address the scope of tribal remedies or waiver thereof, and provide for

47 any consent to jurisdiction of specified courts and the application of laws of other jurisdictions.
48 without the need for further review or approval by the General Council, so long as such
49 agreements are consistent with and necessary to the establishment of tribal gaming and related
50 operations, and such agreements shall be binding upon the Catawba Indian Nation in accordance
51 with their terms; and

52
53 **BE IT FURTHER RESOLVED**, that the Executive Committee shall thereafter report in a
54 session of the General Council on the progress of the gaming ventures, maintaining
55 confidentiality on key terms where public disclosure could be harmful to the Nation, and the
56 General Council shall keep all such discussions confidential.

57
58 Whereas, this motion was made by:

59 JAROM CANTY

60
61 The Motion was seconded by:

62 SHIRLEY STEINIGER

63
64 Votes, Yes: 90

65
66 Votes, No: 3

67
68 Abstentions: 1

69
70
71
72
73 Certified by Chief William Harris and Secretary/Treasurer Roderick Beck on behalf of the
74 General Council:

75 William Harris

76
77 Roderick Beck

78 On this date of:

79 Saturday November 16, 2019



**THE CATAWBA INDIAN NATION
OFFICE OF TRIBAL GOVERNMENT**

996 AVENUE OF THE NATIONS ROCK HILL, SOUTH CAROLINA 29730
TELEPHONE (803) 366-4792 FACSIMILE (803) 366-0629

**RESOLUTION
OF THE
EXECUTIVE COMMITTEE OF THE GENERAL COUNCIL OF THE
CATAWBA INDIAN NATION
November 22, 2019
Resolution Number: 20191122**

Resolution Approving the Cleveland County Intergovernmental Agreement

WHEREAS, the Catawba Indian Nation was restored to its Federal Status on October 23, 1993 (Public Law 103-116); and

WHEREAS, the General Council is the governing body of the Catawba Indian Nation pursuant to Article 3 Section 1 of the Catawba Indian Nation Constitution; and

WHEREAS, the General Council passed Resolution Number 20191116 on November 16, 2019 in a Special General Council Meeting with quorum present authorizing the Executive Committee "... to negotiate and sign agreements with other entities on behalf of the Nation including but not limited to financing, leasing, inter-governmental and other gaming-related agreements..."; and

WHEREAS, pursuant to the authority granted in the Catawba Constitution and Bylaws, the Chief of the Catawba Indian Nation "shall at all times [has] general supervision of the affairs of the General Council and Executive Committee and such matters as naturally pertain to the general welfare of the community [Bylaws, Article 1, Section 1(a)"; and

WHEREAS, the Catawba Indian Nation, as an exercise of its sovereign authority, is seeking to advance the economic and social well-being of the Catawba People and surrounding communities through the management and operation of a tribal and economic development project on 16.57 acres +/- of off-reservation land located in Kings Mountain, Cleveland County, North Carolina, which the Nation has requested that the United States Department of the Interior take into federal trust status on its behalf; and

WHEREAS, to advance these goals, the Catawba Indian Nation and Cleveland County (collectively, the "Parties") desire to enter into an Intergovernmental Agreement to delineate the terms and conditions of the Parties' governmental responsibilities and priorities pertaining to the development, construction, management, and operation of a tribal and economic development project on said lands; and

WHEREAS, the Parties intend that the Intergovernmental Agreement shall govern the jurisdiction of both Parties on said lands to ensure the orderly and efficient delivery of services and to provide the governing standards for the general welfare of all people on the Property in

Jason Harris
Assistant Chief

William Harris
Chief

Roderick Beck
Secretary Treasurer



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terms of public finance, health and safety, and land use and development, as well as services for the Property itself; and

WHEREAS, the Parties intend and understand the Intergovernmental Agreement to be mutually beneficial and made in reliance on the commitments therein.

NOW THEREFORE BE IT RESOLVED, that the Catawba Indian Nation by and through its Executive Committee does hereby approve the attached Intergovernmental Agreement By and Between Cleveland County, North Carolina and the Catawba Indian Nation; and


BE IT FURTHER RESOLVED, that the Executive Committee now authorizes the Chief, acting on behalf of the Executive Committee and the Catawba Indian Nation, to sign the aforesaid Intergovernmental Agreement.

C-E-R-T-I-F-I-C-A-T-I-O-N


THE ABOVE RESOLUTION WAS ENACTED WITH A VOTE OF 5 YES, 0 NAY, AND 0 ABSTENTIONS WITH A QUORUM PRESENT ON NOVEMBER 22, 2019, AND CERTIFIED THERETO BY THE SIGNATURES BELOW:


Chief, William Harris


Assistant Chief, Jason Harris


Secretary/Treasurer, Roderick Beck


Committee Member, Samuel Beck


Committee Member, Thomas C. Sanders

Jason Harris
Assistant Chief

William Harris
Chief

Roderick Beck
Secretary Treasurer