

CLIFF CASTLE CASINO BUSINESS CODE

TITLE 36

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Section 101. PURPOSE

To establish Cliff Castle Casino, a Subordinate Economic Organization of the Yavapai-Apache Nation, define Cliff Castle Casino's powers, its financial responsibilities, the authority of its General Manager, and for other purposes.

Section 201. DEFINITIONS

- A. "CCC" means Cliff Castle Casino and Hotel.
- B. "Council" means the Yavapai-Apache Nation Tribal Council.
- C. "Finance Director" means the Nation's Finance Director.
- D. "IGRA" means the Indian Gaming Regulatory Act of 1988, 25 U.S.C.A. §§ 2701-2721.
- E. "Nation" means the Yavapai-Apache Nation.
- F. "SEO" means Subordinate Economic Organization.
- G. "TGO" means the Tribal Gaming Office, which is the tribal regulatory agency designated by action of the Tribal Council as the entity which shall exercise civil regulatory authority of the Nation over Class II and Class III gaming activities pursuant to the Nation's Gaming Code.

Section 301. ESTABLISHMENT

A. There is established a Subordinate Economic Organization ("SEO") of the Yavapai-Apache Nation ("Nation") to be known as Cliff Castle Casino ("CCC"), an economic subdivision of the Yavapai-Apache Nation.

B. CCC is an integral part of the Nation organized to perform an essential governmental function of the Nation, with all revenues restricted to public purposes and serving the Nation's interests rather than for private gain. CCC is subject to the ultimate financial and managerial control by the Nation's Tribal Council ("Council"). When exercising Council delegated powers, CCC maintains the full measure of the Nation's sovereign immunity, the Nation's exemption from federal and state taxation, and the Nation's right to be treated as a state for the purposes of Section 7871 of the Internal Revenue Code of 1986, as amended from time to time.

C. CCC promotes the economic self-sufficiency of the Nation by generating revenues through the operation of a casino, hotel, convention center, restaurant(s), and family entertainment center for or on behalf of the Nation, in part to make up for property tax revenues funding state, county and local government operations and which revenues

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are generally unavailable to the Nation. CCC performs such other duties and responsibilities as may be assigned periodically to CCC by the Council. CCC shall have no private shareholders.

Section 302. COUNCIL DELEGATED POWERS TO CCC

A. CCC shall have the power to administer and operate the business of CCC, including hiring and firing of CCC staff, entering into agreements on behalf of CCC and managing such assets as the Nation assigns to CCC. In so doing, CCC shall function autonomously on a day-to-day basis while remaining ultimately accountable to the Nation, and specifically to the Council, through the enactment of policies, resolutions, laws, or otherwise as provided for in this Code.

B. CCC may enter into agreements (referred to herein as “contracts” or “agreements”) without specific Council approval only when the following requirements of this Section 302, B and Section 302, C, below, are met:

1. For contracts, the contract value does not exceed \$100,000 and the transaction in question is: a) part of CCC’s ordinary and routine course of business; b) specifically beneficial to CCC; and c) funded by and consistent with the specific allocations of a CCC budget approved pursuant to Section 303, C below.

2. For debt in leasing or purchasing any fixed asset, the debt does not exceed \$100,000 and: a) the transaction must be authorized by a budget that has been approved pursuant to Section 303, C below; and b) significant terms of such transaction must be included in CCC’s report to the Council for the period in which the transaction took place.

3. CCC shall not enter into any agreement or participate in any transaction, without the approval of the Council, which requires expenditures or involves financial obligations in excess of CCC’s budget approved pursuant to Section 303, C below.

4. Council approval is required for any acquisition, conveyance, lease or other disposition of real property by CCC. For any acquisition by CCC of real property, the Council shall determine, by resolution, whether such land shall be owned in fee simple absolute by CCC, in fee simple absolute by the Nation or by the United States in trust for the Nation.

5. Except as expressly provided under the requirements of this Section 302, and in strict accordance with the same, CCC shall have no authority to waive sovereign immunity in any agreement entered into under this Code. CCC is required to regularly consult with the Nation's Attorney General or his/her designee to determine whether agreements entered into pursuant to this Section are consistent with this Section 302 and the Nation’s law, and are otherwise

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adequately protective of the Nation's assets. Any agreement that contains, appears to contain, or may be interpreted to contain, a waiver of sovereign immunity must be reviewed and approved in writing by the Nation's Attorney General or his/her designee before the agreement is entered into. Any agreement purporting to waive sovereign immunity without the requisite reviews and approvals of the Attorney General or that otherwise fails to comply with the requirements of this Section 302 is void or voidable.

C. Except as provided in this Section 302, C, there shall be a limit to the liability and financial obligations that CCC can incur without further specific Council approval through resolution.

1. CCC's aggregate liability, obligation and financial exposure shall always remain limited solely and specifically to the assets of CCC. Barring Council directive providing otherwise, such liability, obligation and financial exposure shall never include or obligate any real property, personal property or accounts or any other assets of the Nation, or of any other SEO of the Nation, or of any branch, program, department, affiliate, enterprise, authority, division, subdivision or entity of the Nation. Unless the Council provides otherwise, no liability, obligation, financial exposure or debt of CCC shall extend to those assets transferred from the accounts or business of CCC to the accounts of the Nation or to amounts payable to the Nation by CCC.

2. All obligations incurred by CCC in connection with CCC shall be special obligations of CCC payable solely from the assets of CCC, separate and apart from the rest of the assets of the Nation.

3. CCC's obligations are not general obligations of the Nation.

4. Unless specifically provided otherwise in a separate resolution adopted by the Council, CCC can only assume responsibility and be liable only in its own name, and never in the name of the Nation, or any other Nation branch, program, department, authority, affiliate, enterprise, division, subdivision or entity.

5. No claim for liability or any other payment obligation in relation to the activities of CCC may be brought against the Nation or the Nation's other assets or property, including those of other SEOs, branches, programs, departments, authorities, affiliates, enterprises, divisions, subdivisions or entities by any other name or designation of the Nation. Unless a waiver of sovereign immunity is granted in accordance with this Section 302 or under other applicable law of the Nation, no claim for liability of any kind or any other payment obligation may be brought against CCC.

6. Unless specifically provided otherwise in a separate resolution adopted by the Council, CCC's liability for any project, undertaking or act shall

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always be expressly limited in any contract or other agreement to actual unpaid contractual obligations (compensatory damages) and/or contractual specific performance and shall not include general, consequential, incidental, special or punitive damages.

7. No waiver of sovereign immunity may be implied. Any waiver of sovereign immunity that is approved under this Section 302 shall be: (a) express and unequivocal; (b) set forth in writing; and (c) narrowly tailored and construed.

8. Unless specifically provided otherwise in a separate resolution adopted by the Council:

a. CCC may, subject to the limitations and requirements set forth in this Section 302, waive its sovereign immunity from un-consented suit to resolve disputes (i) in the Yavapai-Apache Nation Tribal Court, (ii) through arbitration, (iii) in Federal Court for the District of Arizona or (iv) in the Arizona State Courts. Any waiver of sovereign immunity given by CCC under this paragraph shall be in writing, and granted in the order of forum preference set forth in this paragraph.

b. The waiver of sovereign immunity contained herein shall extend solely to the parties (including applicable third-party beneficiaries thereto) executing the agreement with CCC, as well as any approved successors and assigns thereof. Such waiver of sovereign immunity does not and shall not be construed to extend to: (i) any person or entity other than such parties, third-party beneficiaries, and approved successors and assigns; or (ii) any claims for general, consequential, incidental, special or punitive damages.

c. The preferential order for the choice of law CCC shall use in resolving disputes under the agreement shall be: (i) the law of the Nation; (ii) the law of the United States; or (iii) the law of the State of Arizona, respectively.

9. No provision herein and no action of CCC shall be deemed or construed to waive the sovereign immunity of the Nation, or any other Nation SEO, branch, program, department, authority, affiliate, enterprise, division, subdivision or entity by any other name or designation of the Nation.

10. Unless specifically provided otherwise in a separate resolution adopted by the Council and to the extent that CCC obtains or provides insurance, bonding or other third-party indemnification pertinent to any agreement, CCC shall not have the authority to waive the sovereign immunity of CCC pursuant to that agreement beyond the limits of the coverage of such insurance, bonding or third-party indemnification applicable thereto. CCC's sovereign immunity is not, and shall not be, waived beyond the limits of such coverage. An insurer,

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bondsman or indemnitor retained by CCC may not avoid its obligations by asserting the sovereign immunity of CCC.

11. Any waiver of sovereign immunity by CCC, its General Manager, agents, employees or representatives resulting through action outside the scope of authority of CCC, its General Manager, agents, employees or representatives not allowed under this Code, or that is otherwise not in compliance with the provisions of this Section 302, is void or voidable.

D. CCC may seek permission from the Council for consent to enter into transactions that are not within the powers delegated to CCC under this Section 302, Subsections A through C above, including the following:

1. Purchasing or leasing real property on behalf of the Nation or encumbering real property owned by the Nation, provided that the subleasing of real property may be conducted by CCC without the Council's approval should a master lease or other document covering such real property approved by the Council so provide;

2. Entering into any contract or otherwise incurring any obligation in connection with an activity that is not within the ordinary course of CCC's business such as, by way of example, construction of significant improvements in real property owned by the Nation or the entry into a new business activity;

3. Entering into any financial obligation, and executing any associated loan documents, contrary to the provisions of Section 302, B, Subsection 2, above; and

4. Any transaction or act that involves liability, obligation or financial exposure in excess of that which is permitted under the terms of Section 302, B and C above.

E. Notwithstanding the provisions set forth in this Section 302, the Council retains the discretion to veto agreements and transactions, and to withhold any associated waivers of sovereign immunity, on a case-by-case basis, where specific questions are raised regarding certain agreements not already entered into by CCC, but which are otherwise authorized under Section 302, A through C, above. Furthermore, the Council retains the sole discretion to prospectively limit, by resolution, the types of agreements in which sovereign immunity may be waived even if such agreements otherwise satisfy the requirements set forth herein.

Section 303. FINANCIAL RESPONSIBILITIES OF CCC

A. CCC shall maintain financial books and records of account separate and apart from those of the Nation and shall generate and maintain reports accurately reflecting the financial position, revenues and disbursements of CCC in accordance with generally accepted accounting principles and following the Nation's fiscal year. CCC's

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business and financial records shall be available for inspection and copying by the Council, the Finance Director, and/or, within the parameters of applicable law, the Council's designees. CCC's books of account and financial reports shall be audited by an independent and reputable firm of certified public accountants, approved by the Council, and the corresponding audit reports shall be presented to the Council and to the Finance Director in such format as they may from time to time prescribe. The Council may order a special audit of CCC to be performed either by an independent and reputable firm of certified public accountants or by the Nation's internal auditor(s) and/or Finance Director.

B. In order to properly track the CCC assets, CCC shall maintain a separate tax identification number issued by the United States Internal Revenue Service.

C. Consistent with the Nation's fiscal year, CCC shall adopt (i) an annual operating budget of revenues and expenditures and (ii) a capital expenditures budget. These budgets shall be in such form as may be prescribed from time to time by the Council and/or the Finance Director. The capital expenditures budget shall identify and define CCC's plans for capital investments, including material operating leases, and shall state whether the planned investments are intended to be made from cash flow accumulations, borrowing, or otherwise. The budgets shall be approved by CCC's General Manager before such budgets are presented to the Council for approval. The Council must approve the budgets and, if applicable, appropriate money before CCC can expend such funds ("approved budget"). Any amendments to an approved budget that would exceed the total amount of the approved budget shall also be approved by the Council before CCC can expend such funds.

D. CCC shall account for and transfer to the Nation any cash flow accumulations that exceed CCC's operational and capital expenditure requirements. Such transfers shall be made in a timely manner as determined in consultation with the Finance Director and pursuant to guidelines adopted by the Council, if any.

E. The highest dollar amount of indebtedness or liability, direct or contingent, to which CCC may at any time subject itself, either in the aggregate or for a specific transaction or undertaking, shall be determined and directed from time to time by the Council. Review and approval by the Council shall be required only for any transaction or undertaking in excess of such amount.

F. The Council may, in its sole discretion, require CCC to utilize the services of one or more accountants, which accountant(s) may also provide accounting services to the Nation's other SEOs.

G. At least twice each fiscal year (or more frequently as may be required by the Council) and consistent with Section 309 below, CCC shall appear before and report to the Council concerning CCC's activities.

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Section 304. RESERVED*

Section 305. RESERVED*

Section 306. GENERAL MANAGER*

A. The operation of CCC shall be governed by a General Manager, hired by the Council. Subject to Council oversight, the General Manager shall manage the operation and development of CCC, and all gaming and non-gaming activities within and/or associated with CCC's facilities in accordance with the Indian Gaming Regulatory Act (IGRA), the Gaming Compact with the State of Arizona, and the Nation's Gaming Code, all as amended from time to time.

B. The General Manager shall perform such duties as are designated in a position description approved by the Council, along with such other responsibilities as are assigned by the Council. The General Manager shall have the authority to:

1. Develop and implement business and operations plans to accomplish CCC's strategic goals;
2. Exercise final hiring and termination authority over all CCC employees in accordance with the personnel policies of CCC;
3. Develop and implement operational and management procedures for the efficient and productive operation of CCC;
4. Develop personnel policies, including a Code of Ethics, for all employees of CCC;

* Section 304. B. 9. - Amended on May 18, 2010 by Resolution No. 89-10
Section 304. B. 1 - Amended on May 17, 2012 by Resolution No. 100-12
Section 304. B. 6 and E - Amended on March 13, 2014 by Resolution No. 54-14
Section 304 – CCC'S BOARD OF DIRECTORS – removed on October 2, 2014 by Resolution No. 195-14

* Section 305 – CCC'S OFFICERS – removed on October 2, 2014 by Resolution No. 195-14

* Section 306. A and B. - Amended on May 18, 2010 by Resolution No. 89-10
Section 306 – Amended on October 2, 2014 by Resolution No. 195-14 to reflect the removal from the Code of provisions related to a Board of Directors

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5. Develop and implement, subject to TGO approval, internal controls, policies, and procedures that impact compliance with the Gaming Compact with the State of Arizona and the Nation's Gaming Code;

6. Acquire and dispose of equipment or assets with a value not to exceed \$100,000, subject to Section 302 hereinabove;

7. Enter into contracts for goods and services with a value not to exceed \$100,000, subject to Section 302 hereinabove; and

8. Approve CCC's operational and capital expenditure budgets for each fiscal year and present the budgets to Council for approval under Section 309, B.

C. To the extent that the Council is not hindered from fulfilling its responsibility to oversee the successful operation, management, and development of CCC, the Council should not routinely interfere with the authority and responsibility of the General Manager to daily operate and manage CCC in the most efficient and economical manner to generate and increase revenue.

Section 307. FINANCIAL INTERESTS IN CCC

Neither the General Manager nor any member of the CCC management team or any employee of CCC shall (1) have any direct or indirect financial interest that conflicts with, or appears to conflict substantially with, their responsibilities or duties as CCC General Manager or employees; (2) engage in financial transactions for private gain as a result of, or otherwise make use of for private gain, information and/or influence obtained through his or her status as a General Manager or employee of CCC; (3) solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from any person, corporation, group or entity that has interests in or any relationship with, or is seeking to obtain any contractual or other business or financial relationship with CCC, or that conducts or seeks to conduct operations or activities that are regulated by CCC, or that has interests that may be affected by the General Manager's, any member of the CCC management team's or any employee's performance or non-performance of his or her official duties for CCC; and (4) use any CCC property for purposes other than officially approved business activities. However, the General Manager, members of the CCC management team and employees may accept -within the bounds of good taste - social amenities and tokens of negligible monetary value as are consistent with generally prevailing legal and ethical business practices and customs.

Section 308. INDIAN PREFERENCE IN EMPLOYMENT

CCC shall maintain effective policies for giving preference in hiring, promotion, and training to qualified enrolled Nation members in all levels of employment, including specifically in the employment of management employees. Effective preference policies shall be developed and adopted by CCC consistent with the Nation's law and policies.

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CCC shall, in furtherance of the policies so developed, advise Nation employment officials of job openings as soon as possible and give full consideration to any enrolled Nation member referred to CCC for any job opening. The Indian preference policies shall provide for and require training programs to prepare enrolled Nation members for hiring and promotion in all levels of employment.

Section 309. REPORTS TO THE COUNCIL

A. CCC, acting through the General Manager, shall provide monthly reports to the Council on its operations, significant activities, and events. The reports shall include at least the following information as well as any other information the Council may request:

1. Financial statements showing revenues and disbursements for the applicable month and for the fiscal year to date with comparisons to the operating and capital expenditure budgets.

2. A description of all waivers of sovereign immunity given in connection with any transaction entered into by CCC under Section 302 hereinabove.

3. A list and brief description of any claims asserted against CCC by way of lawsuit, whether threatened or filed.

4. The total number of persons employed by CCC, the number of employees who are enrolled Nation members, the number of employees who are enrolled members of other Indian tribes, the number of enrolled Nation member employees who started employment during the reporting period, and the number of Nation member employees who left employment during the reporting period.

5. A list and brief description of internal controls, policies and procedures adopted or amended by CCC.

6. A description of any regulatory issues, including the results of any internal or external audits and any violations issued by TGO.

B. Prior to the end of each fiscal year, CCC shall present to, and obtain approval from, the Council for CCC's operational and capital expenditure budgets for the next fiscal year. Before seeking approval from the Council, CCC's General Manager shall approve CCC's budgets. The Council presentation shall be made both verbally and in writing. Any amendment to the budgets following the budgets' original adoption shall be approved by the Council before such amendment is authorized and approved.

C. CCC's report for the final month of each fiscal year shall be submitted in writing containing the financial statements for the concluded fiscal year.

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D. From time to time the Nation's Finance Director may provide formats for the monthly presentations and may request that additional information be included.

E. The Council may request additional or supplemental reports or presentations at any time.

Section 310. MISCELLANEOUS

A. The Nation's Attorney General or his/her designee shall serve as legal counsel to CCC. Outside legal counsel may be retained by CCC for certain specialized matters, but only with approval of the Council and the Nation's Attorney General and in accordance with an approved budget. However, in no case shall such outside legal counsel in any way supplant the responsibilities delegated to the Attorney General under this Code. In all cases, the Attorney General shall oversee the work of outside legal counsel.

B. The General Manager is responsible for determining CCC management's compensation based upon the goals and budget of CCC.

C. The General Manager shall cooperate with the Finance Director in working with the Nation's external auditors to complete CCC's annual audit. The General Manager shall meet with the external auditors of CCC prior to the beginning of the audit to advise the auditors of any concerns or areas of emphasis for the audit, as well as after the audit is completed to receive and review the audit report.

D. The General Manager and employees of CCC shall not be liable for the debts of CCC. The private property of CCC's General Manager and its employees shall be forever exempt from CCC's debts and the Yavapai-Apache Nation hereby indemnifies and holds harmless CCC's General Manager and its employees from liability or other claims arising out of their duties or functions as CCC's General Manager or employees. This indemnity and protection from personal liability shall not extend to those actions or activities of the General Manager and employees of CCC who create liability in relation to their intentionally wrongful acts or omissions, and/or who create liability for themselves or CCC by exceeding the scope of their official duties, responsibilities or obligations.

E. The Council hereby determines that all actions taken by CCC and all rights and obligations of CCC which have been established as a result of CCC's powers derived from CCC's original creation enactments are not to be invalidated by the adoption of this Code and this Code shall be controlling as to future actions, rights and obligations of CCC beginning with the effective date specified below.

Section 311. REPEAL OF PRIOR LAW

Upon the passage of a subsequent Council Resolution, which acknowledges the transfer and assignment of all Cliff Castle Casino's (original enterprise) assets and

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liabilities to CCC, any Tribal law or enactment creating Cliff Castle Casino (original enterprise) is hereby repealed and Cliff Castle Casino (original enterprise) is hereby dissolved. The Revised and Adopted Yavapai-Apache Nation Cliff Castle Casino Board of Director's Act of 2005, the Gaming Board Act of 1998 and the Gaming Board Act of 1995 are hereby repealed. To the extent that any prior motion, resolution, ordinance, code, act, or other law of the Nation conflicts with any provision of this Code, the provisions of this Code shall control and the conflicting provision(s) are hereby repealed.

Section 312. EFFECTIVE DATE

This Code will take effect on April 23, 2009, except that any contract existing with Cliff Castle Casino (original enterprise) shall remain in effect in accordance with its terms other than being assigned to, and assumed by, the new CCC.