

HABEMATOLEL POMO OF UPPER LAKE GAMING FACILITY TORT LIABILITY ORDINANCE

1.0 Title.

This Ordinance shall be known as the Habematolel Pomo of Upper Lake Gaming Facility Tort Liability Ordinance (“Ordinance”).

2.0 Statement of Purpose.

This Ordinance is adopted by the Habematolel Pomo of Upper Lake, a federally recognized Indian Tribe (“Tribe”), in compliance with Section 12.5(b) of the Tribal-State Gaming Compact between the Tribe and the State of California. This Ordinance does not constitute a general waiver of Tribal sovereign immunity, as such waiver is strictly limited as set forth herein. The Ordinance shall be strictly construed to provide a process for the consideration and evaluation of claims brought by persons claiming to have suffered bodily injury, personal injury or property loss, and applies only to those activities undertaken by the Gaming Operation or its employees which occur in the Gaming Facility or in connection with the Tribe’s Gaming Operation and which occur on the Tribe’s “Indian lands” as defined in 25 U.S.C. § 2703(4). This Ordinance applies only to those claims which are considered actions arising in tort under California State law or Tribal law and that are also covered by the liability insurance Policy of the Gaming Operation.

3.0 Definitions.

Unless otherwise required by the context, the following words and phrases are defined as follows:

3.1 “Actual Damages” means the ascertainable loss of money or property sustained as a result of an injury covered under this Ordinance, without regard to any deductible contained in the Policy.

3.2 “Award” means money damages which the Claims Administrator or Gaming Commission determines are payable to compensate for an injury recognized under this Ordinance.

3.3 “Claim” means a petition for an award under this Ordinance. A claim must be filed within one hundred eighty (180) days of occurrence with respect to any injury, as defined in this Ordinance.

3.4 “Claims Administrator” means the person appointed by the Tribe to administer all claims filed under this Ordinance.

3.5 “Compact” means the Class III Tribal-State Gaming Compact between the Tribe and the State of California executed on or about March 17, 2011.

3.6 “Days” means calendar days. For purposes of filing a timely notice of claim or giving proper notice to a claimant, the Claims Administrator, or the Gaming Commission, the enumerated number of calendar days shall be binding, unless the last calendar day falls on a weekend or holiday, in which case the following business day shall be the effective last calendar day.

3.7 “Employee” means a part or full time employee, agent or contractor of the Gaming Operation, when acting during the course and within the scope of his or her employment, and includes volunteers, as well as officials of the Gaming Operation when they are acting to fulfill their duties to the Gaming Operation. The term does not include agents or representatives of the United States or of the State of California or any of their political subdivisions.

3.8 “Executive Council” means the primary governing body of the Tribe established under the Tribe’s Constitution.

3.9 “Gaming Commission” means the Habematolel Pomo of Upper Lake Tribal Gaming Commission, the commission established under the Tribe’s Gaming Ordinance to license and regulate the Tribe’s gaming activities.

3.10 “Gaming Facility” means any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or other funds of the Gaming Operation are maintained (excluding offsite facilities dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation.

3.11 “Gaming Operation” means the Tribe’s governmental gaming project which offers and operates Class III gaming activities, whether exclusively or otherwise, and which project shares all aspects of the Tribe’s sovereign immunity.

3.12 “General Membership” means the body of the Tribe, comprised of the adult membership of the Tribe who are eligible to vote.

3.13 “Injury” means death, harm to a person, or damage to or loss of property which, if inflicted by a person under California law or the Tribe’s laws, would constitute a tort which is expressly covered by the liability insurance of the Gaming Operation.

3.14 “Person” means any individual, form, partnership, corporation, or association.

3.15 “Policy” means the commercial general liability insurance policy providing coverage for bodily injury, personal injury and property damage arising out of, connected with or relating to the operation of the Gaming Facility and Gaming Operation in accordance with the requirements set forth in the Compact.

3.16 “Third Party Administrator” means the independent third party designated or hired by the Tribe to administer certain claims under this Ordinance.

4.0 Effective Date of Ordinance.

This Ordinance and any subsequent amendments shall be deemed to have taken effect on the effective date they are approved and adopted by the Executive Council and the General Membership for the approval of the limited waiver of sovereign immunity as required by the Constitution.

5.0 Limited Waiver of Sovereign Immunity for Patron Claims.

5.1 The Tribe retains its sovereign immunity from unconsented suit except as to the limited waiver contained this Ordinance. The Tribe’s Executive Council, Gaming Commission, and all Tribal officials, officers, employees, and agents remain immune from suit for actions taken during the course and within the scope of their official duties without regard to the policy making, discretionary, or ministerial nature of their duties. Determinations of course and scope with respect to actions of the Tribe’s Executive Council, Gaming Commission, and all Tribal officials, officers, employees, and agents are exclusively a matter of Tribal law and shall be made pursuant to Section 10.2 of this Ordinance.

5.2 Pursuant to Section 12.5(b) of the Compact, the Tribe hereby waives its sovereign immunity and its right to assert sovereign immunity with respect to the arbitration of all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe’s land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, but only up to the greater of ten million dollars (\$10,000,000) or the limits of the Policy; provided, however, that this limited waiver shall only be in effect after the exhaustion of the Tribe’s dispute resolution process and shall not be deemed to waive or otherwise limit the Tribe’s sovereign immunity for any portion of the claim that exceeds ten million dollars (\$10,000,000) or the Policy limits, whichever is greater. All such privileges and immunities are expressly retained.

5.3 Employees or authorized agents of the Tribe may not invoke, and the Tribe shall not invoke on behalf of any employee or agent, the Tribe’s sovereign immunity in connection with any claim for, or any judgment based on any claim for, intentional injury to persons or property committed by the employee or authorized agent, without regard to the Tribe’s liability insurance limits. Nothing in this Section prevents the Tribe from invoking sovereign immunity on its own behalf or authorizes a claim against the Tribe or a tribally owned entity.

5.4 All tort claims against the Gaming Operation must proceed first through the Tribe’s dispute resolution process under Section 10 of this Ordinance before any further dispute resolution may be pursued by a claimant. The Tribe has not waived, and does not hereby waive, its immunity or that of the Gaming Operation from suit in state or federal court for any purpose except as expressly required to (i) compel arbitration after exhaustion of the Tribe’s dispute resolution process, (ii) confirm, correct, modify, or vacate the arbitral award rendered in the

arbitration, or (iii) enforce or execute a judgment based upon an arbitration award as required by the Compact. The Executive Council, Gaming Commission and their officials, officers, and employees are not authorized and shall not attempt to waive the Tribe's sovereign immunity without the express written approval of the General Membership.

5.5 Tort claims against the Gaming Operation for injuries proximately caused by negligent acts or omissions of the Gaming Operation may be pursued under this Ordinance through the Tribe's dispute resolution process under Section 10 of this Ordinance for those injuries proximately caused by the negligent acts or omissions of the Gaming Operation, to the extent that such injuries are expressly covered by the liability insurance coverage and policy limits of the Gaming Operation without regard to any deductible amount contained in the Policy.

6.0 Principles of Law Applicable to Determination of Claims and Limitation on Awards.

6.1 California tort law, including all applicable statutes of limitations, shall govern all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Operation, provided however, that California tort law shall not govern the award of punitive damages. No punitive damages may be awarded in any claim pursuant to this Ordinance under any circumstances.

6.2 In no event shall any award of damages be applied for or made under this Ordinance in excess of ten million dollars (\$10,000,000) and then only to the extent that such damages are expressly covered by the Gaming Operation's liability insurance. No Tribal or Gaming Operation assets excluding liability insurance proceeds may be the subject of, or used to satisfy, an award of damages under this Ordinance in excess of the deductible amount of said Policy.

7.0 Volunteers.

Volunteers duly authorized by the Tribe or Gaming Operation in performing any of their authorized functions or duties or training for such functions or duties shall have the same degree of responsibility for their actions.

8.0 Extent of Liability.

In any claim concerning a single occurrence, the maximum total amount of any award under this Ordinance, including damages, interest, and any other covered costs shall be:

8.1 For any injury to any one person, an amount which is in accordance with the terms and policy limits of the Gaming Operation's liability insurance policy applicable to such claim, or the \$10,000,000 limit of the Policy, whichever is greater. The Tribe does not waive its sovereign immunity from suit for any amount above and beyond these maximum total amounts.

8.2 For any injury to any two or more persons, an amount which is in accordance with the terms and policy limits of the Gaming Operation's liability insurance policy applicable to

such claim, or the \$10,000,000 limit of the Policy, whichever is greater. The Tribe does not waive its sovereign immunity from suit for any amount above and beyond these maximum total amounts.

9.0 Filing Claims.

9.1 Claims brought under this Ordinance must be made in writing and must be filed with the Claims Administrator by the claimant or the claimant's representative, or, if the claim is one for death by negligent act or omission, by either the personal representative, the surviving spouse, or next of kin of the deceased claimant. Notice of all claims must be filed as required herein no later than one hundred eighty (180) days after the claim accrues, which time limit is jurisdictional. A claim shall accrue on the date the injury is sustained. Failure to file a claim within the one hundred eighty (180) day timeframe shall be an absolute bar to dispute resolution pursuant to this Ordinance.

9.2 The notice of claim shall contain the following:

- (1) The claimant's name and address and the name and address of the claimant's attorney, if applicable;
- (2) A concise statement of the claim's factual basis including the date, time, place and circumstances of the act or omission;
- (3) The name of any Gaming Operation employee involved, if known;
- (4) A concise statement of the nature and the extent of the injury claimed to have been suffered;
- (5) A statement of the amount of monetary damages requested; and
- (6) Copies of any and all documentation supporting the claimed amount of monetary damages.

9.3 The Claims Administrator, the Gaming Commission, or representatives acting on their behalf, may request additional information at any time including, without limitation, medical bills, invoices, reports, test results, checks, or other material they may deem necessary to evaluate or settle the claim. In the event the Claims Administrator believes a notice of claim is deficient pursuant to the requirements of Section 9.2 above, the Claims Administrator shall notify the claimant in writing of the deficiency and specify what more is necessary to complete the claim. The Claims Administrator shall forward a copy of this correspondence to the Gaming Commission. Upon review, the Gaming Commission may find the notice of claim sufficient and instruct the Claims Administrator to consider notice of claim properly submitted and begin investigation of the claim.

9.4 Upon receiving notice, the Claims Administrator, the Gaming Commission, or representatives acting on their behalf, shall provide notice by personal service or certified mail,

return receipt requested, that the claimant is required to pursue claims through the Tribe's dispute resolution process within one hundred eighty (180) days unless otherwise agreed to by the parties, and if the claimant is dissatisfied with the resolution of the Tribe's dispute resolution process, the claimant may arbitrate his or her claim de novo before a retired judge.

10.0 Dispute Resolution Process.

10.1 Claims Administrator Process

(1) Upon receipt of a claim filed pursuant to Section 9.0, the Claims Administrator shall review the claim to determine its general validity, compliance with Section 9.2, the amount of any legitimate damages, and shall duly notify the Third Party Administrator and Gaming Commission of any claims reasonably valued by the Claims Administrator as potentially amounting to more than the deductible amount of the Policy, pursuant to the terms of the Policy. The Claims Administrator shall notify the Third Party Administrator and the Gaming Commission of all new claims as soon as possible, but no later than fifteen (15) days of receipt. The Claims Administrator and Third Party Administrator shall have sixty (60) days from the date of receipt of the claim by the Claims Administrator to settle the claim. The Claims Administrator shall coordinate with the Third Party Administrator to assure that all evidence and relevant facts are considered.

(2) The Claims Administrator shall, after evaluating the claim, or after evaluation of the claim by the Third Party Administrator, have the authority to settle a claim up to the deductible amount of the applicable liability insurance Policy. If the Claims Administrator or Third Party Administrator determine that settlement should be made in excess of the deductible amount of applicable liability insurance Policy, such settlement amount must first be approved by the Gaming Commission and Executive Council in order to be valid and effective. With the Gaming Commission's written concurrence, the Claims Administrator shall request the Executive Council to authorize payment of additional damages for settling the claim. Any settlement award exceeding the deductible amount of the applicable Policy may only be satisfied out of, and pursuant to the provisions and limits of, the applicable insurance Policy. As a condition of settling any claim, claimant shall execute a settlement and release of all claims and a non-disclosure and confidentiality agreement. Any settlement proposed by the Claims Administrator and approved by the Gaming Commission and Executive Council exceeding the deductible amount of the applicable insurance Policy or policies shall be contingent on, and shall require, the applicable insurance company's prior written consent if required by the terms of the Policy.

(3) If the Claims Administrator and Third Party Administrator are unable to settle the claim within sixty (60) days after receipt of the original claim by the Claims Administrator, the Claims Administrator shall refer the claim to the Gaming Commission to set necessary hearing dates to ensure timely processing of claims. Notwithstanding the above, if the claimant and Third Party Administrator or Claims Administrator require additional time to collect records and evidence the parties may agree in writing to allow for additional time to evaluate and possibly settle a claim, which shall be time granted in addition to the one hundred

eighty (180) days provided for in the Compact for the purpose of meaningfully resolving claims with claimants.

10.2 Gaming Commission Process

(1) Upon notification from the Claims Administrator of an unsettled claim and upon receipt of the claim from the Claims Administrator, which should occur no later than sixty (60) days of the initial receipt of the claim by the Claims Administrator unless additional time is agreed to by the Claimant in writing pursuant to Section 10.1(3) above, the Gaming Commission shall review the claim and set a discovery and hearing schedule. The hearing shall be set within ninety (90) days of the Gaming Commission's receipt of the claim from the Claims Administrator.

(2) Prior to the hearing, the Gaming Commission may attempt to resolve the claim through any reasonable means and may, at its discretion, accept evidence from the claimant or the Gaming Operation. The Gaming Commission shall have authority to settle a claim in an amount up to the deductible amount of the Policy. The Gaming Commission may request the Executive Council to authorize payment of damages of more than the deductible amount of the Policy to settle the claim. Any settlement proposed by the Gaming Commission and approved by the Executive Council exceeding the deductible amount of the applicable Policy shall be contingent on, and shall require, the applicable insurance company's written consent if required by the terms of said Policy. Any award exceeding the deductible amount of the applicable liability insurance Policy may only be satisfied out of, and pursuant to the provisions and limits of, the Policy. As a condition of settling any claim made under this Ordinance, the claimant shall execute a settlement and release of all claims and a non-disclosure and confidentiality agreement.

(3) The Gaming Commission shall, within thirty (30) days after receiving an unsettled claim from the Claims Administrator, send written notice to claimant setting a date, time, and location for the Gaming Commission to conduct a hearing on the merits of the claim. Proceedings scheduled before the Gaming Commission shall be conducted in accordance with Tribal policies and procedures. Upon the scheduling of a hearing, the parties may conduct discovery pursuant to the Federal Rules of Civil Procedure, subject to reasonable limitations imposed by the Gaming Commission upon a showing of good cause. The hearing shall provide an opportunity for the claimant and Claims Administrator, or their respective representatives, to present relevant documentary evidence and witness testimony for consideration by the Gaming Commission. The claimant shall at all times have the burden of proof by a preponderance of the evidence to support his or her claim. If the claimant and Third Party Administrator or Claims Administrator require additional time to collect records and evidence the parties may agree in writing to allow for additional time to evaluate and possibly settle a claim, which shall be time granted in addition to the one hundred eighty (180) days provided for in the Compact. The Gaming Commission may continue hearing dates as requested by both parties in writing. Within thirty (30) days of the hearing, the Gaming Commission shall issue its written decision, including any award of damages.

(4) Notice of the Gaming Commission's decision, as well as a Notice of the claimant's rights to appeal pursuant to this Ordinance, shall be sent to the claimant via certified mail, return receipt requested. The claimant shall have thirty (30) days to notify the Gaming Commission of his or her intent to appeal the Gaming Commission's decision. Participation in the Tribe's dispute resolution procedures, including but not limited to appearance at the Gaming Commission hearing, and receipt of a written decision by the Gaming Commission is mandatory. Failure to participate in the Tribe's dispute resolution procedures shall serve as an absolute bar to a claimant's right to trigger de novo review of his or her claim pursuant to Section 10.3 below.

10.3 Binding Arbitration

Pursuant to Section 12.5(b)(3) of the Compact, a claimant who files a claim under this Ordinance who participates in yet remains dissatisfied with the Gaming Commission's written decision can seek de novo binding arbitration. Under these circumstances, the Tribe hereby consents to arbitration before a single arbitrator, who shall be a retired judge, in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS (or if those rules no longer exist, the closest equivalent). Discovery in the arbitration proceedings shall be governed by Section 1283.05 of the California Code of Civil Procedure. The Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court. Pursuant to the claimant's right to and the spirit of de novo review, any expense borne by the claimant during the Tribe's dispute resolution procedures, including but not limited to travel costs or attorneys' fees incurred in relation to the Gaming Commission's hearing on the merits, are not recoverable in the binding arbitration process and any resulting award to claimant.

10.4 Arbitration Appeals Procedure.

Any party dissatisfied with the award of the arbitrator made pursuant to Section 10.3 above may, at the party's election, invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the arbitrator associated with the Appeal Procedure, regardless of the outcome.

11.0 Other Ordinances or Laws.

To the extent that this Ordinance is inconsistent with any other tribal law governing tort claims against the Gaming Operation, or California law the terms of this Ordinance and any relevant section of the Compact shall govern. Notwithstanding the foregoing, in the event the Tribe establishes a judiciary branch of government and a judicial system by Tribal resolution or ordinance, such judicial system and its civil rules and procedures may replace the Gaming Commission's review and fact-finding authority provided in Section 10 of this Ordinance after the judicial ordinance's effective date.

12.0 Availability of this Ordinance.

This Ordinance shall be made available to Gaming Operation patrons as follows: upon receipt of a claim regarding any alleged injury to person or property in connection with the Gaming Operation or its employees which allegedly occurred in the Gaming Facility or in connection with the Tribe's Gaming Operation and on the Tribe's lands, employees of the Gaming Operation shall direct the patron to the Gaming Operation's Claims Administrator. The Claims Administrator shall make a copy of this Ordinance available to any patron requesting one, subject to the following process: the Claims Administrator shall require that the patron first sign and date an acknowledgement of receipt of the Ordinance as a prerequisite to providing a copy of this Ordinance to the patron. The Claims Administrator shall use his or her best efforts to obtain a signed and dated acknowledgement form from patrons who are offered, but decline to accept, a copy of this Ordinance, and shall at a minimum document in writing all such incidents and provide written notice thereof to the Gaming Commission.

13.0 Amendments and Regulations.

This Ordinance may be revised, amended, or repealed from time to time by the General Membership consistent with the Tribe's Compact as the Executive Council and General Membership shall deem appropriate. Regulations promulgated by the Gaming Commission under this Ordinance are subject to revision, repeal, and amendment by the General Membership to the extent required by Tribal law.

14.0 Severability.

If a section of this Ordinance, or its application to any person or entity or circumstances is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or entities or circumstances, shall not be affected and shall remain in full force and effect.